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Kathy Hill, Skagit County Auditor

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ISLAND TITLE COMPANY

QA-3354 ✓

**AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND EASEMENTS
FOR MARINE HEIGHTS**

Reference Number(s): 9707300089, 9708050055
on page 2 of document

Grantor(s):

1. MARINE HEIGHTS, LLC

Grantee(s):

1. PUBLIC

Legal Description:

Plat of Marine Heights, recorded in Volume 16 of Plats, Pages 173-175, under Auditor's File No.9707220058, records of Skagit County, Washington.

AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND EASEMENTS FOR MARINE HEIGHTS

THIS AMENDED DECLARATION is made on this 7th day of September, 1999, by the undersigned who is the owner of certain land situated in the City of Anacortes, State of Washington, County of Skagit, known as Marine Heights, hereafter referred to, defined and more particularly described as the Plat of Marine Heights, recorded in Vol. 16, of Plats on pages 173-175, under Auditor's File Number 9707220058, records of Skagit County, Washington. This Declaration amends and supersedes that Declaration of Covenants, Conditions, and Easements for Marine Heights which was filed under Skagit County Auditors File Number 9707300089 on July 30, 1997, and this Declaration also amends and supersedes that Addendum and Amendment to the Declaration of Covenants, Conditions, and Easements for Marine Heights which was filed under Skagit County Auditors File Number 9708050055 on August 5, 1997.

DESCRIPTION OF DECLARATION

Declarant desires to create in Marine Heights as defined herein a planned community with residential use, services, and facilities, as well as other public and private uses, services, and facilities. Declarant also desires to create permanent open space areas and other common facilities for the benefit of the Marine Heights community, to protect the aesthetic harmony of the Marine Heights community, preserve an open natural appearance, maintain the view and light of each property owner and to provide for the maintenance of open spaces and other common facilities.

This Declaration establishes a plan for the private ownership of lots and buildings constructed thereon, for the dedication of certain areas to municipal corporations, and for the beneficial ownership through a non-profit corporation of all the remaining land and related easements, hereinafter defined and referred to as the "Common Areas". The non-profit corporation is the "Marine Heights Homeowners Association," hereinafter referred to and defined as the "Association", to which shall be delegated and assigned the duties and powers of maintaining and administering the Common Areas and facilities and administering and enforcing the covenants, conditions, and restrictions and collecting and disbursing the assessments and charges hereinafter created.

This Declaration contemplates a plan for the phased development of Marine Heights pursuant to Declarant's Master Plan, as hereafter referred to and defined, in order



that the Marine Heights community may grow in an orderly fashion under a rational scheme of development. The Declaration further establishes the right and power of the Association to levy general and special assessments on each owner, as hereafter referred to and defined, in order to finance the construction and maintenance of improvements to the Common Areas and facilities, and in order to effectuate all the powers and duties of the Association, as described herein. The Declaration further establishes certain restrictions on the various uses and activities that may be permitted in Marine Heights and further establishes the right of the Association to promulgate rules and regulations which may further define and limit permissible uses and activities consistent with the provisions of this Declaration.

NOW, THEREFORE, the undersigned hereby covenants, agrees, and declares that all of Marine Heights, as defined herein, and the buildings and structures hereafter constructed thereon are, and will be, held, sold and conveyed subject to and burdened by the following covenants, conditions, restrictions and easements, all of which are for the purpose of value, desirability, and attractiveness of Marine Heights and all for the benefit of the Owners thereof, their heirs, successors, grantees, and assigns. All provisions of this Declaration shall be binding upon all parties having or acquiring any right, title, or interest in Marine Heights or any part thereof and shall inure to the benefit of the Owners thereof and to the benefit of the Association and are intended to be and shall in all respects be regarded as covenants running with the land.

ARTICLE I DEFINITIONS

Section 1.1 "Association" shall mean and refer to the Marine Heights Association, a Washington non-profit corporation, its successors and assigns.

Section 1.2. "Association Action" shall mean and refer to a written corporate action of the Association in the form of either a by-law or resolution duly passed by either the Board or the Owners.

Section 1.3. "Board" shall mean and refer to the board of directors of the Association.

Section 1.4. "Common Areas" shall mean and refer to all real property that is owned by the Association, or that is designated by Declarant for future ownership by the Association on a final plat or other recorded document creating a phase, including without limitation open space areas and improvements thereon,



recreational and athletic facilities, pedestrian and equestrian trails, bicycle paths, lakes, ponds, wetlands, marshes, parking areas, landscaping, and other areas available for common use and enjoyment by members of the Association, and irrigation, sewer, water, storm drainage and other utility systems located on or in the Common Areas or between the Common Areas and the streets or on or in other public or utility easements.

Section 1.5. "Declarant" shall mean and refer to Marine Heights, LLC, a Washington Limited Liability Company, its successors and assigns; provided, however, that no successor or assignee of Declarant shall have any rights or obligations of Declarant hereunder unless such rights and obligations are specifically set forth in the event of succession or assignment or other recorded instrument or passed by operation of law. Certain rights and obligations of Declarant, as set forth herein, shall cease at the end of the Development Period.

Section 1.6. "Declaration" shall mean and refer to this instrument, as the same may be supplemented or amended from time to time.

Section 1.7. "Development Period" shall mean and refer to that period of time beginning on the date of this Declaration and ending when the Declarant has transferred title to Purchasers of Lots representing fifty-one percent (51%) of the total voting power of all Owners of record as then constituted. Transfer shall occur no later than one (1) year from the transfer of the twenty-fifth (25th) Lot, provided that, the one (1) year period may be extended an additional 6 months at the sole option and discretion of Declarant.

Section 1.8. "Governing Documents" shall mean and refer to this Declaration, Supplementary Declarations, and the Articles of Incorporation and By-Laws of the Association, and as any of the foregoing may be amended from time to time.

Section 1.9. "Marine Heights" shall mean and refer to that certain real property described in Exhibit 1-A attached hereto, and such additions thereto as may hereafter be brought within the terms and conditions hereof in accordance with Article 2 of this Declaration.

Section 1.10. "Living Unit" shall mean and refer to a building or structure or any portion thereof situated in Marine Heights that is designed and intended for use and occupancy as a residence by a Single Family, and the appurtenant landscaping, fences, garages, driveways, or parking areas occupying the Lot on which a Living Unit is situated. The Living Unit shall also encompass the underlying Lot, but the



definition shall not include any Lot on which a Living Unit has not yet received a certificate of occupancy or analogous certificate from the applicable governmental authority.

Section 1.11. "Lot" shall mean and refer to any legally segmented and alienable portion of Marine Heights created after the date of this Declaration (and including Lots in the Plat of Marine Heights, whether or not such plat is recorded after the date of this Declaration), through subdivision, short subdivision, site plan approval or any other legal process for dividing land, with the exception of streets and other public areas and Common Areas.

Section 1.12. "Mortgage" shall mean and refer to any recorded mortgage or deed of trust encumbering one or more of the Lots or Living Units. "First Mortgage" shall mean and refer to a Mortgage with priority over other Mortgages. "Mortgagee" shall mean and refer to the holder or beneficiary of any Mortgage and shall not be limited to Institutional Mortgagees. As used herein, the term "Institutional Mortgagee" or "Institutional Holder" shall include banks, trust companies, insurance companies, mortgage companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations, and any agency or department of the United States Government or of any state or municipal government.

Section 1.13. "Owner" shall mean and refer to the record owner (whether one or more persons or entities) of a fee interest in any Lot or Living Unit, including Participating Builders but excluding Mortgagees or other persons or entities having such interest merely as security for the performance of an obligation. Purchasers or assignees under recorded real estate contracts shall be deemed Owners as against their respective sellers or assignors.

Section 1.14. "Participating Builder" shall mean and refer to a person or entity that acquires a portion of Marine Heights for the purpose of improving such portion in accordance with the Master Plan for resale to Owner or lease to tenants.

Section 1.15. "Single Family" shall mean and refer to a single family home that shall not include more than 4 adults who are legally unrelated.

Section 1.16. "Supplementary Declaration" shall mean and refer to any recorded declaration of covenants, conditions, and restrictions which extends the provisions



of this Declaration to a Phase or which contains such complementary provisions for a Phase as are deemed appropriate by Declarant.

ARTICLE 2 MARINE HEIGHTS ASSOCIATION

Section 2.1. Description of Association. The Association is a non-profit corporation organized and existing under the laws of the State of Washington charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as they may be amended from time to time; provided, however, that no Governing Document other than this Declaration shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2.2. Association Board. Declarant shall within 90 days of execution of this Declaration, select an initial Board of not fewer than 3 persons who need not be Owners. The initial Board shall have the full authority and all rights, responsibilities, privileges, and duties to manage the Association under the Governing Documents and shall be subject to all provisions of the Governing Documents. The term of the initial directors of the Board shall expire at the first annual meeting of the Association following their appointment by Declarant. The Board shall elect officers of the Association from among the Board members, which shall include a president, who shall preside over meetings of the Board and meetings of the Association, and such other officers as may be elected by the Board.

Section 2.3. Association Membership. Every person or entity who is an owner shall by reason thereof be a member of the Association. Such membership shall be appurtenant to and held and owned in the same manner as the beneficial fee interest in the Lot or Living Unit to which it relates. Membership shall not be separated from ownership of the Lot or Living Unit to which it relates; provided, however, that any Owner may delegate his rights of membership in the Association and rights of enjoyment in the Common Areas to the members of his family and to his tenants occupying a Living Unit.

Section 2.4. Votes Appurtenant to Living Units. Every Owner shall be entitled to cast one vote in the Association for each Lot or Living Unit owned. For any unimproved Lot on which more than one Living Unit is authorized by the City of Anacortes, the Owner thereof shall be entitled to cast one vote for each Lot authorized thereon; but if fewer Living Units are actually constructed thereon than the number authorized, the Owner thereof shall, after the date of the certificate of occupancy, be entitled to cast only one vote for each Living Unit actually



constructed on such Lot. A vote shall be appurtenant to and held and owned in the same manner as the beneficial fee interest in the Lot or Living Unit to which it relates. A vote shall not be separated from ownership of the Lot or Living Unit to which it relates; provided, however, that when more than one entity holds the beneficial fee interest in any Lot or Living Unit, the vote therefor, shall be cast as the Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Living Unit; and if the several Owners of a Lot or Living Unit are unable to agree as to the casting of their vote, such vote shall not be counted. When a single entity owns more than one Lot or Living Unit, each vote may be cast separately.

Section 2.5. Initial Number of Votes. From the commencement of the existence of the Association, there shall be a total of 49 outstanding votes in the Association, representing one vote for each of the Lots, the maximum number presently authorized by the City of Anacortes for Marine Heights. During the Development Period, the Declarant shall be entitled to cast 25 votes.

Section 2.6. Adjustment to Number of Votes. If more than 49 Lots are authorized by the City of Anacortes for Marine Heights at any time during the Development Period, or for any contiguous lots to Marine Heights that benefit from Marine Heights services, the number of votes in the Association shall be readjusted at such time to reflect the increased number of Lots, and Declarant shall be entitled to cast all such votes. At the end of the Development Period, the number of votes in the Association shall be readjusted to equal the number of Lots in Marine Heights to that date. Thereafter, Declarant shall be entitled to cast votes only for Lots then owned by Declarant. If, after the end of the Development Period, additional Lots are platted from time to time in Marine Heights, the number of votes in the Association shall be similarly readjusted from time to time, in order that there shall thereafter always be one vote for each Lot in Marine Heights.

Section 2.7. Owner's Compliance with Governing Documents. By acceptance of a deed to a Lot, execution of a contract therefor, or any other means of acquisition of an ownership interest, whether or not it shall be so expressed in any such deed or other instrument, the Owner thereof covenants and agrees thereby, on behalf of himself and his heirs, successors, and assigns, to observe and comply with all terms of the Governing Documents of the Association, and all rules and regulations duly promulgated pursuant to Association Action.

Section 2.8. Rules and Regulations. The Association shall have the power to adopt and to enforce rules and regulations governing the use of Marine Heights in addition to the use restrictions contained in this Declaration and whether or not expressly contemplated herein, provided that such rules and regulations shall not be inconsistent with this Declaration. The rules and regulations may not discriminate



among Owners. The Association may prescribe penalties for the violation of such rules and regulations, including but not limited to suspension of the right to use the common areas or portions thereof. Any such rules and regulations shall become effective 30 days after promulgation or amendment and shall be made available to all Owners within 30 days after promulgation or amendment. A copy of the rules and regulations then in force shall be retained by the secretary of the Association and be available for inspection by any Owner during reasonable business hours. Such rules shall have the same force and effect as if set forth herein.

Section 2.9. Architectural Control Committee. The Association shall establish and continuously maintain an Architectural Control Committee, composed of three or more representatives as provided in the By-Laws of the Association, to review and approve or disapprove the details and written plans and specifications showing the nature, kind, shape, height, materials, colors, and location of proposed Living Units, buildings, fences, walls, or other structures, exterior additions to or changes or alterations thereon, clearing or excavation of Lots, or cutting of trees within Marine Heights. The purpose of the Architectural and Planning Board is to achieve and maintain the aesthetic goals of the Declarant. The Association Action shall enforce guidelines, criteria, and procedures governing the Architectural Control Committee and the Owners' compliance with the provisions of Section 2.8 hereof shall apply to such guidelines, criteria, and procedures as if fully set forth in this Section 2.9.

ARTICLE 3

ASSOCIATION BUDGET, ASSESSMENTS, AND LEINS

Section 3.1. Owners Covenant to Pay Assessments. By acceptance of a deed to a Lot, execution of a contract therefor, or any other means of acquisition of an ownership interest, whether or not it shall be so expressed in any such deed or other instrument, the Owner thereof covenants and agrees thereby, on behalf of himself and his heirs, successors, and assigns, to pay the Association, in advance, all general and special assessments levied as provided herein.

Section 3.2. Association Budget. The Association shall prepare, or cause the preparation of, an operating budget for the Association at least annually, in accordance with generally accepted accounting principles. The operating budget shall set forth all sums required by the Association, as estimated by the Association, to meet its annual costs and expenses, including, but in no way limited to, all management and administration costs, operating and maintenance expenses of the Common Areas, and services furnished to or in connection with the Common Areas, including the amount of all taxes and assessments levied against, and the cost or liability and other insurance on the Common Areas, and including charges for any services furnished by or to the Association; the cost of utilities and other



services; the cost of Funding all reserves established by the Association; and the cost of an Assessment for a Local Improvement District (L.I.D.), established, for the construction of future street improvements to that portion of Marine Drive/Tyler Circle abutting Marine Heights at its western boundary (approximately 650 feet in length), including, and when appropriate, a general operating reserve and a reserve for replacements. The funds required to meet the Association's annual expenses shall be raised from a general assessment against each Lot Owner of record as provided hereafter. The Association may revise the operating budget as it deems necessary or advisable in order to take into account and defray additional costs and expenses of the Association.

Section 3.3. Levy of General Assessment. In order to meet the costs and expenses projected in its operating budget, the Association shall, by Association Action, determine and levy in advance on every Owner of record a general assessment. The amount of each owner's general assessment shall be the amount of the Association's operating budget divided by the number of existing Lots in Marine Heights. The Association shall make reasonable efforts to determine the amount of the general assessment payable by each Owner for an assessment period at least 30 days in advance of the beginning of such period and shall at that time prepare a roster of the Owners and the general assessment allocated to each, which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Association. Notice of the general assessment shall thereupon be sent to each Owner; provided, however, that notification to an Owner of the amount of an assessment shall not be necessary to the validity thereof. The omission by the Association, before the expiration of any assessment period, to fix the amount of the general assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Owner from the obligation to pay the general assessment, or any installment thereof for that or any subsequent assessment period, but the general assessment fixed for the preceding period shall continue until a new assessment is fixed. Upon any revision by the Association of the operating budget during the assessment period for which such budget was prepared, the Association shall, if necessary, revise the general assessment levied against the Owners and give notice of the same in the same manner as the initial levy of a general assessment for an assessment period.

Section 3.4. Payment of General Assessment. Upon Association Action, installments of general assessments may be collected on a monthly, quarterly, semi-annual or annual basis. Any Owner may prepay one or more installments on any assessment levied by the Association without premium or penalty.



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Section 3.5. Non-Discriminatory Assessment. Except as provided in Section 5.14 hereof no assessment shall be made at any time which may unreasonably discriminate against any particular Owner or group of Owners in favor of other Owners. However, a special assessment may be made against a particular Owner by a two-thirds majority vote of the Board or other Association committee to which such oversight responsibility has been delegated, in the event that, after notice from the Association of failing to maintain the same in a condition comparable to the other Lots or Living Units in Marine Heights has been given to the Owner thereof the Association elects to expend funds to bring such Owner's Lot or Living Unit up to such comparable standard.

Section 3.6 Commencement of Assessments; One-Year Exemption of Vacant Lots. Liability of an Owner for assessments shall commence on the first day of the calendar month following the date upon which any instrument of transfer to such Owner becomes operative (such as the date of a deed, the date of a recorded real estate contract for the sale of any Lot or Living Unit, the date of death in the case of a transfer by will or intestate succession, etc.), and, if earlier, the first day of the calendar month following the first occupancy of a Living Unit by an Owner; provided, however, that a Participating Builder shall not be liable for any assessments with respect to a Lot acquired from Declarant for a period of one year from the date of acquisition. The Association may in its rules and regulations provide for an administratively convenient date for commencement of assessments that is not more than 90 days after the effective date established above. The due dates of any special assessment payments shall be fixed by Association Action authorizing such special assessment.

Section 3.7. Certificates of Assessment Payment. Upon request, the Board shall furnish written certificates certifying the extent to which assessments payments on a specified Lot is paid and current to the date stated therein. Issuance of such a certificate shall be conclusive evidence of payment of any assessments therein declared to have been paid. A reasonable charge may be made by the Association for the issuance of such certificate.

Section 3.8. Special Assessments. In addition to the general assessments authorized by this Article, the Association may, by Association Action, levy a special assessment or assessments at any time against existing Lots only, applicable to that year only, for the purpose of defraying, in whole or part, the cost of any construction or reconstruction, inordinate repair, or replacement of described capital improvement located upon or forming a part of the Common Areas, including necessary fixtures and personal property related thereto, or for such other purpose the Association may consider appropriate; provided, however, that any such assessment must have prior favorable vote of Owners of record representing



two-thirds of the existing Lots. The amount of each Owner's special assessment for any year shall be the total special assessment for such year, divided by the sum of the number of existing Lots.

Section 3.9. Effect of Non-Payment of Assessment. If any assessment payment is not made in full within 30 days after it was first due and payable the unpaid amounts shall constitute a lien against the Lot assessed, together with a \$25.00 per month penalty so long as the assessment payment remains outstanding. The \$25.00 per month penalty shall be imposed in full on the 31st day the assessment is late, and additional monthly penalties will accumulate accordingly. By acceptance of a deed to a Lot, execution of a contract therefor, or any other means of acquisition of an ownership interest, and whether or not it shall be so expressed in any such deed or other instrument, each Owner shall be deemed to grant thereby to the Association, its agents and employees, and to Declarant during the Development Period, the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt, and to enforce the liens created by this Declaration in favor of the Association by foreclosure of the continuing liens in the same form of action as is then provided for the foreclosure of a mortgage on real property. The liens provided for in this Declaration shall be for the benefit of the Association as a corporate entity, and the Association shall have the power to bid in at any lien foreclosure sale and to acquire, hold, lease, mortgage, and convey the lot foreclosed against.

Section 3.10. Lien to Secure Payment of Assessments. Declarant hereby creates in the Association perpetually the power to create a lien in favor of the Association against each Lot to secure the Association the payment to it if all assessments, interest, costs, and attorney's fees; and Declarant hereby subjects all Lots perpetually to such power of the Association. Such lien shall arise in accordance with the terms of this Declaration without the necessity of any further action by the Association, and any such lien when created, shall be a security interest in the nature of a mortgage in favor of the Association. Such lien shall become a continuing lien in the amount stated in the assessment from the time of the assessment, but expiring prorata as the assessment payments are made, and shall also be the personal obligation of the person or entity who is the Owner of the Lot at the time of the assessment. The personal obligation to pay a prior assessment shall not pass to successors in interest unless expressly assumed by them; provided, however, that in the case of a sale or contract for the sale of any Lot or Living Unit which is charged with the payment of an assessment, the person or entity who is the Owner immediately prior to the date of such sale shall be personally liable for the amounts of the monthly installments becoming due on or after such date. The foregoing limitation on the duration of the personal obligation of an Owner to pay assessments shall not, however, affect the validity or duration of the continuing lien for unpaid assessments against the respective Lot.



Section 3.11. Suspension for Non-Payment of Assessment. If an Owner shall be in arrears in the payment of any assessment due, or shall otherwise be in default of the performance of any terms of the Governing Documents of the Association for a period of 30 days, said Owner's voting rights shall without the necessity of any further action by the Association, be suspended (except as against foreclosing secured parties) and shall remain suspended until all payments, including interest thereon, are brought current and any other default is remedied. No Owner is relieved of liability for assessments by non-use of the Common Areas or by abandonment of a Lot or Living Unit.

Section 3.12. Reserves for Replacement. As a common expense, the Association shall establish and maintain a reserve fund for replacement of the Common Areas and any improvements and community facilities thereon by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Association. Such fund shall either be deposited with a bonding institution, the accounts of which are insured by any state or by any agency of the United States of America or, in the discretion of the Association, be invested in obligations of or fully guaranteed as to principal by, the United States of America. The reserve fund shall be expended only for the purpose of affecting the replacement of the Common Areas and any improvements and community facilities thereon, major repairs to any sidewalks, parking areas, or pathways developed as a part of Marine Heights, equipment replacement, and for start-up expenses and operating contingencies of a nonrecurring nature. The Association may establish such other reserves for such other purposes as it may from time to time consider to be necessary or appropriate. The proportional interest of any Owner in any such reserves shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned, or transferred, or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

Section 3.13. Certain Areas Exempt. The Common Areas and all portions of Marine Heights dedicated to and accepted by a public authority or other charitable or non-profit corporation exempt from taxation under the laws of the State of Washington, shall be exempt from assessments by the Association.

Section 3.14. Division of Assessments. All assessments to the Homeowners Association shall initially be prorated at 1/49th per lot Owner of record. Lot Owners shall include all Lot Owners, either by transfer of ownership to Purchaser or to the Declarant as Owner of untransferred Lots.



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ARTICLE 4 SUBORDINATION OF LIENS

Section 4.1 Intent of Provisions. The provisions of this Article 4 apply for the benefit of each Mortgagee who lends money for purposes of construction or to secure the payment of the purchase price of a Lot or Living Unit.

Section 4.2. Mortgagee's Non-Liability. The holder of a Mortgage shall not, by reason of the security interest only, be liable for the payment of any assessment or charge, nor for the observance or performance of any covenant or restriction, excepting only those enforceable by equitable relief and not requiring the payment of money, and except as hereafter provided.

Section 4.3. Mortgagee's Rights During Foreclosure. During the pendency of any proceeding to foreclose a Mortgage, including any period of redemption, the holder of the Mortgage, or the receiver, if any, may exercise any or all of the rights and privileges of the Owner of the encumbered Lot or Living Unit, including but not limited to the right to vote in the Association to the exclusion of the Owners exercise of such rights and privileges.

Section 4.4. Mortgagee as Owner. At such time as a Mortgagee shall become the record Owner of the Lot or Living Unit previously encumbered by the Mortgage, the Mortgagee shall be subject to all of the terms and conditions of this Declaration, including the obligation to pay for all assessments and charges in the same manner as any Owner.

Section 4.5. Mortgagee's Title Free and Clear of Liens. A Mortgagee or other secured party acquiring title to a Lot or Living Unit through foreclosure, suit, deed of trust sale, deed in lieu of foreclosure, or equivalent method, shall acquire title to the encumbered Lot or Living Unit free and clear of any lien authorized by or arising out of the provisions of this Declaration, insofar as such lien secures the payment of any assessment or charge installment due but unpaid before the final conclusion of any such proceeding, including the expiration date of any period of redemption. The Association may treat any unpaid assessments against a Lot or Living Unit foreclosed against as a common expense, in which case it shall prorate such unpaid assessments among the remaining Lots and Living Units, and each such remaining Lot and Living Unit shall be liable for its prorated share of such expense in the same manner as for any other assessment.



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Section 4.6. Survival of Assessment Obligation. After the foreclosure of a security interest in a Lot or Living Unit, any unpaid assessments shall continue to exist and remain as a personal obligation of the Owner against whom the same was levied, and the Association shall use reasonable efforts to collect the same from such Owner.

Section 4.7. Subordination of Assessment Liens. The liens for assessments provided for in this Declaration shall be subordinate to the lien of any Mortgage or other security interest placed upon a Lot or Living Unit as a construction loan security interest or as a purchase price security interest, and the Association will, upon demand, execute a written subordination document to conform to the particular superior security interest. The sale or transfer of any Lot or Living Unit or any interest therein shall not affect the liens provided for in this Declaration except as otherwise specifically provided for herein, and in the case of a transfer of a Lot or Living Unit for purposes of a security interest, liens shall arise against the Lot or Living Unit for any assessment payments coming due after the date of completion of foreclosure (including the expiration date of any period of redemption).

ARTICLE 5

USE COVENANTS, CONDITIONS, AND RESTRICTIONS

Section 5.1. Authorized Uses. Marine Heights shall be used solely for the uses authorized in the Master Plan, a copy of which is attached to and made a part of this instrument as Exhibit "A" hereof. Such uses are limited to residential use, utility stations, and other uses and facilities normally incidental to a residential plat. During the Development Period, no Lot shall be further subdivided without Declarant's prior written approval. Thereafter, no Lot shall be further subdivided without prior approval conferred by Association Action.

Section 5.2. Approval of Building or Clearing Plans Required. No Living Unit, building, fence, or other structure shall be commenced, erected, or maintained upon a Lot or any other portion of Marine Heights, nor shall any exterior addition to or change or alteration therein be made, nor shall a Lot be cleared or excavated for use, nor shall any tree of 12 inches or more diameter on any Lot, measured one foot above ground level be cut, until after the details and written plans and specifications showing the nature, shape, height, materials, colors, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to the harmony of external design and location in relation to surrounding structures, vegetation, and topography.



Section 5.3. Leasing Restrictions. No Lot or Living Unit may be leased or rented by any party for a period of fewer than 30 days, nor shall less than the whole of any Lot or Living Unit be leased or rented. Each lease or rental agreement shall be in writing and shall by its terms provide that it is subject in all respects to the provisions of the Governing Documents. Any failure by a lessee to comply with the terms of the Governing Documents shall be a default under the lease, whether or not it is so expressed therein. Other than the foregoing, there is no restriction on the right of any Owner to lease his Lot or Living Unit.

Section 5.4. Animals. No animal, livestock, or poultry of any kind shall be raised, bred, or kept; provided however, that dogs, cats, or other conventional household pets may be kept if they are not kept, bred, or maintained for any commercial purposes. No domestic pet may be kept if it is a source of annoyance or a nuisance. The Association shall have the authority to determine whether a particular pet is a nuisance or a source of annoyance, and such determination shall be final and conclusive. Pets shall be attended at all times and shall be registered, licensed, and inoculated from time to time as required by law. When not connected to the Owners Lot or Living Unit, pets within Marine Heights must be accompanied by a responsible person.

Section 5.5. Commercial Uses. No commercial enterprise, including itinerant vendors, shall be permitted on any Lot or in any Living Unit; provided, however, that the Association may permit specified home occupations to be conducted if allowed by law and if such occupation will not, in the reasonable judgment of the Association, cause traffic congestion or other disruption of the Marine Heights community.

Section 5.6. Trailers and Campers. The Association may prohibit the storage within Marine Heights of all or any of the following: mobile homes, house trailers, campers, camp trucks, boats, boat trailers, junk vehicles, or any other similar machinery or equipment of any kind or character. However, an Owner may keep on or in a Lot or Living Unit such equipment and machinery as may be reasonable, customary, and usual in connection with the use and maintenance of any Lot or Living Unit, provided such equipment and machinery when not in use is screened from view from adjacent streets, Lots, and Living Units. The Association may keep such equipment and machinery as it may require in connection with the maintenance and operation of the Common Areas. Except for bona fide emergencies, the repair or extraordinary maintenance of automobiles or other vehicles shall not be carried out in Marine Heights.



Section 5.7. Garbage/Yard Waste. No garbage, refuse, or rubbish shall be deposited or left in Marine Heights, unless placed in a suitable covered container. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained, and no burning of any trash, refuse, or scrap of any kind shall be permitted. No lawn clippings, other yard wastes, or uncontrolled fill of any type shall be placed on the property. Sanitation service may not be available in inclement weather and in that eventuality, bills will not be adjusted. (Required by condition of Preliminary Plat)

Section 5.8. Utilities Underground. Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, telephone, power, or television cable, or similar transmission line shall be installed or maintained above the surface of the ground; provided, however, that propane tanks shall be subject to the provisions of Paragraph 5.6 hereof.

Section 5.9. Mining Prohibited. No portion of Marine Heights shall be used for the purpose of boring, mining, quarrying, or exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

Section 5.10. Signs. Except for entrance, street, directional traffic control and safety signs, all signs of Participating Builders, or agents or contractors thereof or the Association shall be pre-approved by Declarant. No signs or advertising devices of any character shall be erected, posted, or displayed upon, in, or about Marine Heights; provided, however, that one temporary real estate sign, as preapproved by Declarant, may be erected upon any Lot or attached to any Living Unit placed upon the market for sale or lease. Any such temporary real estate sign shall be removed promptly following the sale or rental of such Lot or Living Unit.

Section 5.11. No Obstruction of Easements. No structure, planting, or other material shall be placed or permitted to remain upon Marine Heights which may damage or interfere with any easement or the installation or maintenance of utilities, or which may change, obstruct, or retard direction or flow of any drainage channels.

Section 5.12. Antennae. No external short-wave or citizens' band antennae, freestanding antenna towers, or satellite reception dishes of any kind shall be permitted in Marine Heights. All television and/or FM radio antennae must be



physically attached to a structure and must comply with applicable governmental standards and guidelines and any Association rules and regulations.

Section 5.13. Wells. Water wells on Lots will be allowed provided they meet all governmental requirements. Owners shall be required at all times to connect their Living Units to the public water system facilities provided by The City of Anacortes and at all times to maintain such facilities in good working order and repair. No water pipes from any private systems shall be connected to any other source of supply.

Section 5.14. Owners' Maintenance Responsibilities. The maintenance, upkeep, and repair of individual Lots and Living Units shall be the sole responsibility of the individual Owners thereto and in no way shall it be the responsibility of the Association, its agents, subagents, officers or directors. Owners shall maintain their Lots and Living Units and any and all appurtenances thereto in good order, condition, and repair, and in a clean, sightly, and sanitary condition at all times. Without limitation as to the foregoing, each Owner shall be obligated to maintain the landscaping on his Lot in a healthy and attractive state and in a manner comparable to that on the other Lots in Marine Heights. After notice to an Owner from the Association of such Owner's failure to so maintain his landscaping, and after approval of a two-thirds majority vote by the Board or other Association committee to which such oversight responsibility shall have been delegated, the Association shall have the right, through its agents and employees, to enter upon any Lot which has been found to violate the foregoing standards in order to repair, maintain, and/or restore the landscaping to such standards. The cost of such work shall be a special assessment on such Owner and his Lot only, and the provisions of this Declaration regarding collection of assessments shall apply thereto.

Section 5.15. Weapons. No firearms of any kind or nature, including rifles, handguns, bows, slingshots, BB guns, slings, traps, or any other like weapon, shall be used or discharged within Marine Heights except by authorized governmental officials. No hunting shall be permitted within Marine Heights.

Section 5.16. Sales and Construction Facilities. Despite any other provisions of this Declaration, it is permissible for Declarant and Participating Builders, or agents or contractors thereto to maintain on any portion of Marine Heights owned by Declarant or Participating Builders such Facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the construction and sale of Lots or Living Units, including without limitation business offices, storage areas, construction yards, signs, model Living Units, or sales offices. All sales and construction Facilities in Marine Heights, and all Lots and any construction sites in



Marine Heights, shall be maintained in a clean and orderly fashion and free from trash, debris or refuse of any kind; and in the case of construction on a Lot, the owner of any Lot shall be responsible for daily clean-up of the construction site and the entire Lot (if necessary) so as to prevent the proliferation of trash, debris and refuse, and to prevent the disorderly and unappealing appearance of Marine Heights. All construction sites and sales facilities shall maintain, in working order, portable or other toilet facilities for use by construction crews or sales personnel. Construction crews shall use said facilities at all times. At the election of Declarant and/or the Association, any construction crew which violates the terms of this paragraph may be immediately and forcibly removed from Marine Heights, and the owner of any Lot shall hold harmless and indemnify Declarant and/or the Association from any claim by the owner of the Lot or any third party for said action.

Section 5.17. Nuisances Prohibited. No noxious or offensive trade or activity shall be conducted in any portion of Marine Heights, nor shall anything be done or maintained therein in derogation or violation of the laws of the State of Washington, Skagit County, City of Anacortes or any other applicable governmental entity. Nothing shall be done or maintained on any portion of Marine Heights which may be or become an annoyance or nuisance to the neighborhood or other Owners or detract from the value of the Marine Heights community. The Association shall determine by Association Action whether any given use of a Lot or Living Unit unreasonably interferes with the rights of the other Owners to the use and enjoyment of their respective Lots and Living Units, or of the Common Areas, and such determination shall be final and conclusive.

Section 5.18. Construction of Living Units; Conformity with Master Plan. All construction of Living Units, including use of construction material shall, in addition to being approved by the Architectural Control Committee, be in conformity with the "General Construction Standards" contained in the Master Plan at Exhibit "A" hereof.

Section 5.19. Relief from Certain Provisions. In cases where an Owner has made a factual showing that strict application of the provisions of sections 5.4, 5.5, 5.6, 5.10, 5.12, and 5.15 only of this Article (regulating animals, commercial uses, trailers and campers, signs, antennae, and weapons, respectively) would work a severe hardship upon him, the Board by Association Action may grant the Owner relief from any such provisions, in addition to any exceptions or provisions already contained in those sections; provided, however, that such relief shall be limited by its scope or by conditions to only that necessary to relieve the hardship; and provided further, that no such relief shall be granted if the condition thereby created



would in the reasonable judgment of the Board violate the provisions of section 5.17 of this Article. The decision of the Board in granting or denying such relief shall be final and conclusive.

ARTICLE 6 COMMON AND SHARED AREAS

Section 6.1 Title to Common Areas and Parklands. Declarant shall from time to time during the Development Period convey to the Association the Common areas designated on a final plat or other recorded map. Upon its creation as a Common Area and whether or not it shall have been conveyed as yet to the Association, every Common Area shall be subject to an easement of common use and enjoyment in favor of the Association and every Owner, their heirs, successors, and assigns, in accordance with the terms and conditions of the Governing Documents. Such easement shall be appurtenant to and shall not be separated from ownership of any Lot or Living Unit and shall not be assigned or conveyed in any way except upon the transfer of title to such Lot or Living Unit, and then only to the transferee of such title and shall be deemed so transferred and conveyed whether or not it shall be so expressed in the deed or other instrument conveying title. Certain rights of use, ingress, egress, occupation, and management authority in the Common Areas set forth elsewhere in this Declaration shall be reserved to Declarant for the duration of the Development Period. All Common Areas when conveyed to the Association, shall be free and clear of financial liens and encumbrances. Assessments shall not be used to defray operating and maintenance costs of Common Areas which have not yet been conveyed to the Association.

Section 6.2. Maintenance of Common Areas. The Association shall maintain, repair, replace, improve, and otherwise manage all of the Common Areas so as to keep them in good repair and condition and shall conduct such additional maintenance, repair, replacement, construction, or reconstruction as may be determined pursuant to Association Action to promote the recreation, health, safety, and welfare of the Owners. Any action necessary or appropriate to the maintenance and upkeep of the Common Areas, the landscaping, irrigation, sewer and water systems, all buildings, gas, telephone, or electrical or television facilities applicable to the Common Areas, shall be taken by the Association only.

Section 6.3. Maintenance of Detention Ponds. On a quarterly schedule, the detention ponds within Marine Heights shall be inspected by a professional engineer. The Inspection checklist is attached under Schedule 2. The checklist shall be completed and submitted to the City of Anacortes Public Works Department for their review. Any work items to be performed under the checklist shall be performed within 7 working days of the date of report. Upon completion



of any work items, the Anacortes Public Works Department shall be notified of said work items completed. Continuous documentation of all inspection reports and work items completed shall be maintained by the Home Owners Association. Upon turnover of the facilities to the City of Anacortes, as prescribed in the conditions of Preliminary Plat, approval copies of said documentation shall be made available to the City.

Section 6.4. Street Improvements. In the event that future street improvements are made to that portion of Marine Drive/Tyler Circle abutting the subdivision (Plat of Marine Heights) at its western boundary (approximately 650 feet in length), the applicant agrees to participate in a Local Improvement District (L.I.D.) to fund the project. This responsibility will pass to the Marine Heights Homeowners association as the lots are sold and Article 3 of the Covenants will be amended to reflect this agreement.

Section 6.5. Driveways. Shared, private driveways within the Plat of Marine Heights, and/or lots incorporated into the Marine Heights Homeowners Association, shall be maintained by the owners of each lot served by said driveway. All shared driveways within the Plat of Marine Heights shall be maintained on an equal share basis by the lot owners served by said driveway, EXCEPT, for the shared driveway of Lot 40 and 41, which shall be maintained at a cost of thirty-three and one-third percent (33 1/3%) by the owner of lot 40 and sixty-six and two-thirds percent (66 2/3%) by the owner of lot 41."

ARTICLE 7 INSURANCE; CASUALTY LOSSES; CONDEMNATION

Section 7.1. Insurance Coverage. The Association shall obtain and maintain at all times as a common expense a policy or policies and bonds written by companies licensed to do business in Washington required to provide:

7.1.1. Insurance against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in an amount as near as practicable to the full insurable replacement value (without deduction for depreciation) of the Common Areas, with the Association named as insured as trustee for the benefit of Owners and Mortgagees as their interests appear, or such other fire and casualty insurance as the Association shall determine will give substantially equal or greater protection insuring the Owners and their Mortgagees, as their interests may appear.

7.1.2. General comprehensive liability insurance insuring the Association, the Owners, Declarant, and any managing agent, against any liability to the public or to the Owners and their guests, invitees, licensees, or tenants, incident to the ownership or use of the Common Areas.

7.1.3. Worker's compensation insurance to the extent required by applicable laws.

7.1.4. Fidelity coverage naming the Association as an obligee to protect against dishonest acts by the Board, Association officers, committees, managers, and employees of any of the and an others who are responsible for handling Association funds, in an amount equal to three months' general assessments on all Lots and Living Units, including reserves.

7.1.5. Insurance against loss of personal property of the Association by fire, theft, and other losses with deductible provisions as the Association deems advisable.

7.1.6. Such other insurance as the Association deems advisable; provided, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect casualty, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for similar projects established by Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Authority, and Veterans Administration, so long as any of them is a Mortgagee or Owner, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Authority, or Veterans Administration.

Section 7.2. Casualty Losses. In the event of substantial damage to or destruction of any of the Common Areas, the Association shall give prompt written notice of such damage or destruction to the Owners and to the holders of all First Mortgages. Insurance proceeds for damage or destruction to any part of the Common Areas shall be paid to the Association as a trustee for the Owners, or its authorized representative, including an insurance trustee, which shall segregate such proceeds from other funds of the Association.

Section 7.3. Condemnation. In the event any part of the Common Areas is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, the Association shall give prompt notice of any such proceeding or proposed acquisition to the Owners and to the holders of all First Mortgages who have requested from the Association

notification of any such proceeding or proposed acquisition. All compensation, damages, or other proceeds therefrom, shall be payable to the Association.

ARTICLE 8 ENFORCEMENT

Section 8.1. Right to Enforce. The Association, Declarant, or any Owner, shall have the right to enforce, by any appropriate proceeding at law or in equity, all covenants, conditions, restrictions, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure or forbearance by any person or entity so entitled to enforce the provisions of this Declaration to pursue enforcement shall in no event be deemed a waiver of the right to do so thereafter.

Section 8.2. Remedies Cumulative. Remedies provided by this Declaration are in addition to, cumulative with, and are not in lieu of other remedies provided by law. There shall be, and there is hereby created and declared to be, a conclusive presumption that any violation or breach or attempted violation or breach of the covenants, conditions, and restrictions herein cannot be adequately remedied by an action at law or exclusively by recovery of damages.

Section 8.3. Covenants Running With the Land. The covenants, conditions, restrictions, liens, easements, enjoyment rights, and other provisions contained herein are intended to and shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing or otherwise occupying any portion of Marine Heights, their heirs, executors, administrators, successors, grantees, and assigns. All instruments granting or conveying any interest in any Lot or Living Unit or all leases or subleases shall refer to this Declaration and shall recite that it is subject to the terms hereof as if fully set forth therein. However, all terms and provisions of this Declaration are binding upon all successors in interest despite an absence of reference thereto in the instrument of conveyance, lease, or sublease.

ARTICLE 9 AMENDMENT AND REVOCATION

Section 9.1. Amendment by Declarant or Association. Declarant may, during the Development Period, amend this Declaration on its sole signature, provided this does not change any City conditions of approval. This Declaration may also be amended by an instrument executed by the Association for and on behalf of the Owners, provided, however, that such amendments shall have received the prior approval of a vote of the Owners (except Declarant) having 75 percent of the total



outstanding votes in the Association; and provided, further, that no such amendment shall be valid during the Development Period without the prior written consent of the Declarant. Notwithstanding any of the foregoing, the prior written approval of 51 percent of all Mortgagees who have requested from the Association notification of amendments shall be required for any material amendment to the Declaration or the Association's By-Laws of any of the following: voting rights; assessments, assessment liens, and subordination of such liens; reserves for maintenance, repair, and replacement of Common Areas; insurance or fidelity bonds; responsibility for maintenance and repair; the boundaries of any Lot; reallocation of interest in the Common Areas, or rights to their use; convertibility of Lots into Common Areas or of Common areas into Lots; leasing of Lots or Living Units other than as set forth herein; imposition of any restrictions on the right of an Owner to sell or transfer his Lot or Living Unit; a decision by the Association to establish self-management when professional management had been required previously by an eligible Mortgagee; any action to terminate the legal status of the Marine Heights development after substantial destruction or condemnation occurs; or any provisions which are for the express benefit of Mortgagees or eligible insurers or guarantors of First Mortgages.

Section 9.2. Effective Date. Amendments shall take effect only upon recording with the Skagit County Department of Records and Elections or any successor recording office.

ARTICLE 10 GENERAL PROVISIONS

Section 10. 1. Taxes. Each Owner shall pay without abatement, deduction, or offset, all real and personal property taxes, general and special assessments, including local improvement assessments, and other charges of every description levied on or assessed against his Lot or Living Unit, or personal property located on or in the Lot or Living Unit. The Association shall likewise pay without abatement, deduction, or offset, all of the foregoing taxes, assessments, and charges levied or assessed against the Common Areas.

Section 10.2. Transfer of Certain Utilities, Utility Repair Easement. Declarant, and the Association after conveyance thereto, may transfer and convey any sewer, water, storm drainage, or other general utility in Marine Heights to a public body for ownership and maintenance, together with any necessary easements relating thereto, and each Lot and Living Unit shall become burdened thereby.



Section 10.3. Non-Waiver. No waiver of any breach of this Declaration shall constitute a waiver of any other breach, whether of the same or any other covenant, condition, or restriction.

Section 10.4. Attorneys' Fees. In the event of an action to enforce any provision of this Declaration, to clarify any of the provisions herein, or to collect any money due hereunder or to foreclose a lien, the unsuccessful party, at mediation, arbitration, trial and/or on appeal, in such action shall pay to the prevailing party all costs and expenses, including but not limited to title reports, and all attorneys fees that the prevailing party has incurred in connection with the suit or action, in such amounts as the court may deem to be reasonable therein.

Section 10.5. No Abandonment of Obligation. No Owner, through his non-use of any Common Area, or by abandonment of his Lot or Living Unit, may avoid or diminish the burdens or obligations imposed by this Declaration.

Section 10.6. Interpretation. The captions of the various articles, sections and paragraphs of this Declaration are for convenience of use and reference only and do not define, limit, augment, or describe the scope, content or intent of this Declaration or any parts of this Declaration. The neuter gender includes the fee and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes a legal entity when the context so requires. The single number includes the plural whenever the context so requires.

Section 10.7. Severability. Invalidity of any one of these covenants, conditions, restrictions, easements, or provisions by judgment or court order shall in no way affect any other of the same, of which shall remain in full force and effect.

Section 10.8. Notices. All notices, demands, or other communications ("Notices") permitted or required to be given by Declaration shall be in writing and, if mailed postage prepaid by certified or registered mail return receipt requested (if a Notice to Declarant, the Association, or to fewer than all Owners), or if mailed first-class postage prepaid (if a Notice to all Owners), shall be deemed given three days after the date of mailing thereof or on the date of actual receipt, if sooner; otherwise, Notices shall be deemed given on the date of actual receipt. Notices shall be addressed to the last known address of the addressee. Notice to any Owner may be given at any Lot or Living Unit owned by such Owner; provided, however, that an Owner may from time to time by Notice to the Association designate such other place or places or individuals for the receipt of future Notices. If there is more than

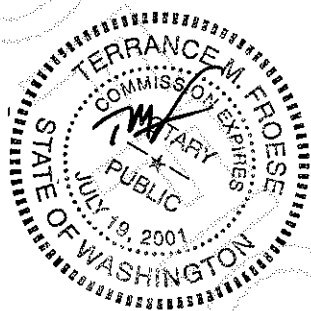


seal affixed (if any) is the corporate seal of said corporation. Witness my hand and official seal hereto affixed the day and year first above written.

Subscribed and sworn to before me this 7th day of September, 1999.

Terrance M. Froese
Terrance M. Froese

NOTARY PUBLIC in and for the
State of Washington, residing at Anacortes.
My Commission expires: 7-19-01



199909130145
Kathy Hill, Skagit County Auditor
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Exhibit "1-A"

LOTS 1-49, PLAT OF MARINE HEIGHTS, AS RECORDED IN VOLUME
16 OF PLATS, PAGES 173-175, AUDITORS FILE NO. 9707220058,
RECORD OF SKAGIT COUNTY, STATE OF WASHINGTON.



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EXHIBIT "A"
MASTER PLAN FOR MARINE HEIGHTS

Number of Homesites/Lots:

49 lots

Use of Homesites/Lots:

Each lot shall contain no more than one Living Unit (as defined in paragraph 1.10 of the Declaration of Covenants, Conditions and Restrictions) which shall be a Single-Family Unit only, subject to the general requirements set forth below.

Siting Requirements:

The following are the siting requirements for construction of all Living Units at Marine Heights:

Side Set-Backs: Ten (10) and Five (5) foot set back from each side of each lot.

Front/Rear Set-Backs: Twenty (20) foot set-back from both front and rear of each lot.

NOTE: The most restrictive setback, "The Master Plan" or the City Zoning Ordinance, shall always control.

General Living Unit Standards:

The general standards for dimensions of Living Units at Marine Heights shall be as follows:

Ground or Entry Floor Minimum Square Footage
(Excluding garage): 1500 square feet

Total Minimum Square Footage
(Excluding garage): 2200 square feet

Maximum Square Footage for
One Accessory Building: 100 square feet

There shall be a maximum of three stalls for any garage, with a limit of one garage per each Lot.

Each Lot may have only one accessory building, with dimensions not to exceed 10 feet by 10 feet. Under this "Master Plan", an "Accessory Building" excludes a "garage", which may be detached if approved by the Architectural Control Committee (ACC).



Height Restrictions:

There shall be height restrictions for each Lot as shown on Schedule 1, attached to and made a part of this Master Plan. As used in Schedule 1, the following terms shall mean:

"One Story Living Unit" shall mean a single story Living Unit. The ridge height of the Living Unit shall be measured in accordance with Schedule 1.

"Daylight Basement Living Unit" shall mean a Living Unit consisting of an "entry floor" and a daylight basement. The ridge height of the Living Unit shall be measured from the curb address numbers in accordance with Schedule 1.

"Unrestricted Living Unit" shall mean a Living Unit which has no height restrictions except for those required by the City of Anacortes.

General Construction Standards:

Any Living Unit erected on any Lot shall contain the minimum dimensions as set forth above, of floor area and shall be constructed only with materials, designs, and colors approved by the Architectural Control Committee.

Design Standards:

Homes shall be constructed utilizing a traditional style design concept.

Plans which provide for pre-engineered metal clad buildings shall not be acceptable or approved.

Runoff from roof drains and footing drains of structures shall be collected in separate tightline pipes and carried to storm drain system.

Approved Materials:

Roof:

Shake or tile roof or other materials must be approved by the Architectural Control Committee. "Architectural Grade" composition roof may be allowed if approved by the ACC. No white or light colored roofs shall be permitted.

Siding Materials:

Exterior walls of all Living Units shall be cedar siding, stucco, or brick. No exterior wall surface of a T 1-11 type shall be permitted.



Driveways:

All driveways shall be surfaced with either concrete or blacktop and shall be completed at the same time applicable for construction of the Living Units. There shall be no exceptions unless authorized by the Architectural Control Committee.

Fences:

No chain fences are allowed except for approved dog runs as approved by the Architectural Control Committee.

HVAC:

No evaporative cooler or heat pump shall be placed, installed, or maintained on the roof or wall of any building or structure on any Living Unit of any Lot. All such cooler and heat systems shall be concealed.

Impervious Surfaces (Maximum square footage):

Under no circumstances should the man-made impervious surface of any lot, including patios and driveways, within the Marine Heights subdivision, exceed 35% of the square footage of said lot.

The specific requirements set forth above for "General Construction Standards" shall in no way be deemed to limit the authority of the ACC to set standards for construction and design in excess of those set forth above; and regardless of whether the plans and specifications of the Owner of a Lot would fulfill the minimum design and construction standards set forth above, the ACC shall still retain the authority to approve or disapprove said plans and specifications or any construction on a Lot without its approval.

Approval Requirements:

No improvements of any kind including, but not limited to, fencing and outbuildings, shall be erected, placed, altered, or permitted to remain on any Lot by any Owner or occupant without approval of the final plans and specifications therefor by the Architectural Control Committee. Such plans and specifications shall be submitted in duplicate, signed by the Owner or an authorized agent of the Owner. Such plans and specifications shall contain, at a minimum, the Following information:

1. A site development plan showing pad location and the nature, shape, composition, and location of all structures with respect to the particular Lot (including proposed front, rear and side set-back lines), and the number and location of all parking spaces and driveways, site lighting, heat pumps, or similar exterior mechanical components, sports courts, utility shed, and signage.



2. Grading and storm drainage plans.
3. Landscaping plan.
4. Building elevations showing dimensions and materials (in no less detail than required for the issuance of a building permit by the City of Anacortes).
5. The proposed exterior color scheme shall also be provided to the ACC.
6. Preliminary plans for pad location and driveways shall be reviewed with and approved by the ACC before "working drawing stage" of plan preparation.
7. Approval of plans and specifications shall be evidenced by written endorsement on such plans and specifications. A copy of which must be received by the Owner of the Lot upon which the prospective building, road, driveway, or other structure is contemplated prior to the beginning of such construction.
8. No changes or deviations in or from such plans and specifications as approved shall be made without the prior written consent of the ACC.
9. **THE ACC SHALL NOT BE RESPONSIBLE FOR ANY STRUCTURAL DEFECTS IN SUCH PLANS OR SPECIFICATIONS NOR IN ANY BUILDING OR STRUCTURE.**
10. Any of the above documents which are required to be submitted to the City of Anacortes or any other applicable governmental authority shall be first submitted in duplicate to the ACC for its approval. Any changes required by the City of Anacortes or any other applicable governmental authority are also subject to approval by the ACC.

Basis for Approval:

Approval shall be based, among other things, upon adequacy of site dimensions, underground utilities, conformity, harmony of external design with neighboring structures, effect of location and use of proposed improvements upon neighboring Lots, adequacy and nature of screening of mechanical or other rooftop installations, and conformity of plans and specifications to the purpose and general intent of this Declaration. Except as otherwise provided herein, the ACC shall have the right to disapprove any plans and specifications for any reason, including without limitation, the following:

1. Failure to comply with any of the terms or conditions of this Declaration or rules or design guidelines of the ACC.



2. Failure to include information as may have been reasonably requested by the ACC.
3. Objection to the exterior design, appearance of materials or type of materials utilized in any proposed structure.
4. Objection due to incompatibility of any proposed structure or use with other existing or proposed structures or uses within Marine Heights.
5. Objection to the location of any proposed use or structure with reference to other existing or proposed structures or uses within Marine Heights.
6. Objection to grading, drainage, or landscape plans.
7. Objection to the color scheme, proportions, style of architecture, height, bulk or appropriateness of any structure.
8. Objection to the number or size of parking spaces, or to the design of the parking area or driveway(s).
9. Any other matter which in the judgment of the ACC, would render the proposed improvements or use inharmonious with the intent of this Declaration.

IN ACTION:

If the ACC fails either to approve or disapprove plans and specifications within 45 days after submission, it shall be conclusively presumed that the ACC has approved said plans and specifications; provided, however, that if within that 45-day period the ACC gives written notice that more time is required for the review, no such presumption shall be made until the expiration date of any reasonable period of time stated in the notice, which period shall not exceed 90 days. Provided further that operation of this section shall not relieve owners of their responsibility to comply with City rules and project approval conditions.

CONDITIONS SET FOR IN "APPROVALS":

The ACC may approve plans and specifications as submitted, or as altered or amended, or subject to specific conditions set forth by the ACC. Upon approval, or conditional approval, one copy of plans and specifications, together with any conditions, shall be retained for permanent record with the ACC, and one copy of approved plans and specifications, together with any conditions, shall be returned to the Owner submitting such plans and specifications.



VARIANCES:

The ACC shall also have authority to approve plans and specifications which do not necessarily conform in every respect to these restrictions, in order to overcome practical difficulties or to prevent hardships in the application of these or subsequent restrictive covenants; provided, however, that such variations so approved shall not constitute a waiver in the future of my provisions of this Declaration and Master Plan applicable to any other Lot. Provided further that operations of this section shall not relieve owners of their responsibility to comply with City rules and project approval conditions.

ACC APPROVAL OF CONTRACTORS:

Any "Prime Contractor" or "General Contractor" must first obtain approval from the ACC in order to engage in any construction at Marine Heights. If the Owner acts as his/her own "Prime Contractor" or "General Contractor" these requirements shall still apply; and the ACC reserves the right to require prior approval of all subcontractors of the Owner when the Owner is not actively engaged in the construction business on a regular basis as a licensed General Contractor. All "Prime Contractors" and "General Contractors" must have a (pre-bid, pre-submittal) conference with the ACC to review plat requirements and these Declarations. Following that initial conference, all "Prime Contractors" and "General Contractors" shall comply with all ACC and other provisions contained herein. No improvements may be made on any Lot by a "Prime Contractor", "General Contractor" or "Subcontractor" other than one properly licensed under the laws of the State of Washington, unless prior approval of that person or entity has been granted by the ACC.

CONSTRUCTION WITHOUT APPROVAL:

If any improvements be erected, placed, or maintained upon any Lot, or any new use commenced upon any Lot, other than with approval by the ACC or as authorized under the terms of this Declaration, such improvements or use shall be deemed to have been undertaken in violation of this Declaration. Upon written notice from the ACC, any such improvements shall be immediately removed, altered, or cease so as to conform to this Declaration. Should such removal alteration, or cessation not be accomplished within 30 days after notice, then the party in breach shall be subject to any enforcement of this Declaration and Master Plan permitted by law.



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PRE-ACQUISITION:

For purposes of this section alone, a party executing a purchase agreement for a Lot may begin the approval process before closing on the Lot, and actions taken by the ACC with respect thereto shall be binding in the event such prospective purchaser subsequently acquires that Lot.

PROCEEDING WITH WORK:

Upon receipt of approval from the ACC, the Owner shall as soon as practicable, satisfy any and all conditions of such approval and diligently proceed with the commencement and completion of all approved excavation, construction, and alterations.

DELAY/REVOCATION:

In all cases, work shall commence within one year from the date of approval. If work is not so commenced, approval shall be deemed revoked unless the ACC, pursuant to written request made and received prior to the expiration date of said one year period, extends that period of time.

COMPLETION SCHEDULE:

All construction shall be completed within nine (9) months from the commencement thereof unless the ACC extends such time when conditions, in its sole discretion, warrant such extension. All landscaping and drainage work shall be completed as approved within six months of completion of the main residence building, unless approved for an extension of up to three additional months by the ACC.



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SCHEDULE 1
HEIGHT RESTRICTIONS
Marine Heights

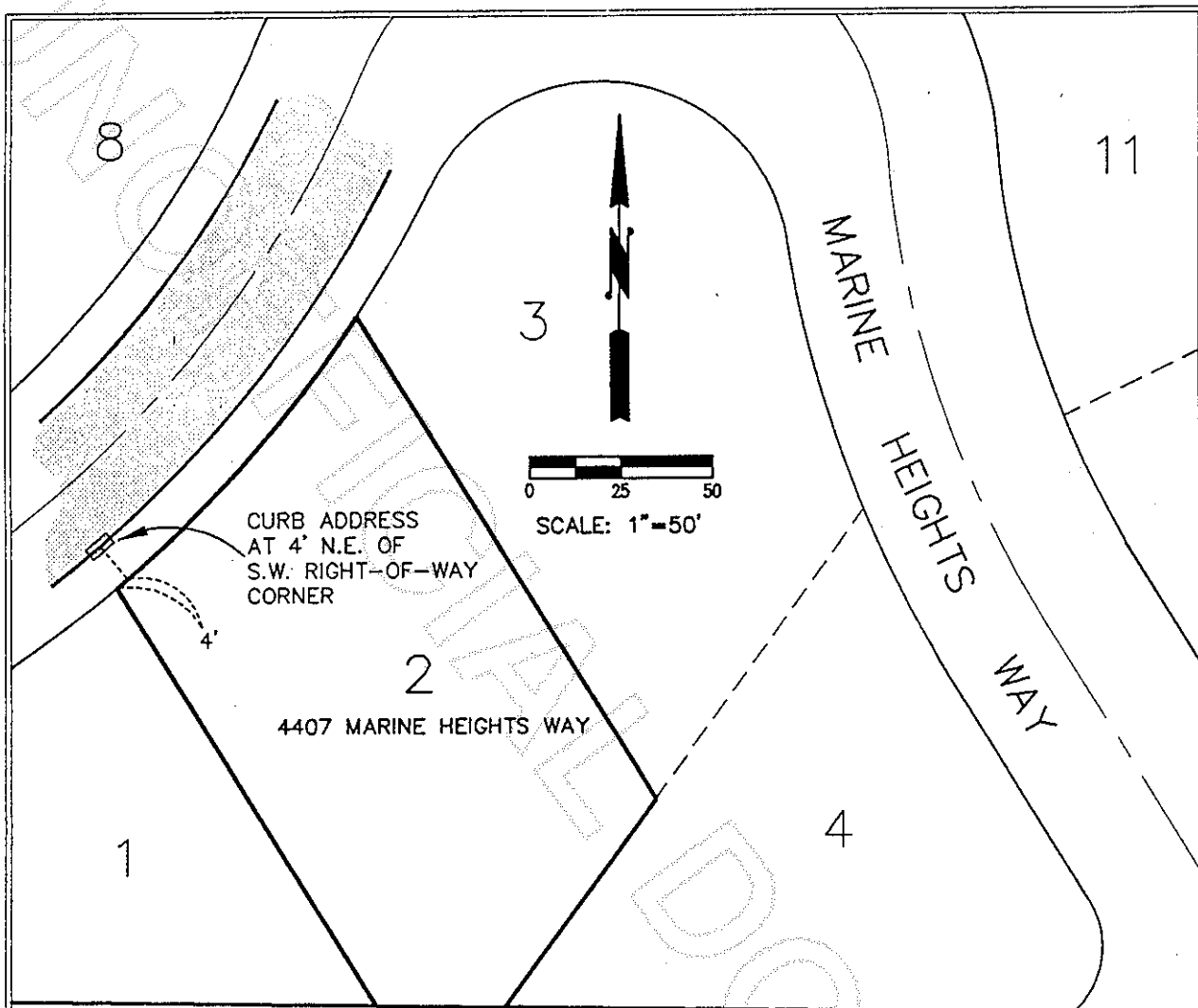
Lot 1	Daylight Basement with Living Unit
Lot 2	See attached map
Lot 3	Daylight Basement with Living Unit
Lot 4	See attached map
Lot 5	Unrestricted Living Unit
Lot 6	Unrestricted Living Unit
Lot 7	Unrestricted Living Unit
Lot 8	Unrestricted Living Unit
Lot 9	See attached map
Lot 10	See attached map
Lot 11	See attached map
Lot 12	Daylight Basement with Living Unit
Lot 13	Daylight Basement with Living Unit
Lot 14	See attached map
Lot 15	See attached map
Lot 16	See attached map
Lot 17	One Story Living Unit
Lot 18	Unrestricted Living Unit
Lot 19	One Story Living Unit
Lot 20	One Story Living Unit
Lot 21	One Story Living Unit
Lot 22	Daylight Basement with Living Unit
Lot 23	Daylight Basement with Living Unit
Lot 24	Daylight Basement with Living Unit
Lot 25	See attached map
Lot 26	See attached map
Lot 27	Daylight Basement with Living Unit
Lot 28	See attached map
Lot 29	See attached map
Lot 30	See attached map
Lot 31	See attached map
Lot 32	One Story Living Unit (Unrestricted Living Unit if sited against north property line)
Lot 33	One Story Living Unit (Unrestricted Living Unit if sited against north property line)
Lot 34	Daylight Basement with Living Unit
Lot 35	Daylight Basement with Living Unit
Lot 36	Daylight Basement with Living Unit
Lot 37	Unrestricted Living Unit
Lot 38	Unrestricted Living Unit
Lot 39	Unrestricted Living Unit
Lot 40	One Story Living Unit
Lot 41	Unrestricted Living Unit
Lot 42	Unrestricted Living Unit
Lot 43	Unrestricted Living Unit
Lot 44	Unrestricted Living Unit
Lot 45	Unrestricted Living Unit
Lot 46	Unrestricted Living Unit
Lot 47	Unrestricted Living Unit
Lot 48	Unrestricted Living Unit
Lot 49	Unrestricted Living Unit



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PLAT OF
ANACO BEACH

LOT 2

PLAT of MARINE HEIGHTS

ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER
SHALL NOT EXCEED 53.2 FEET



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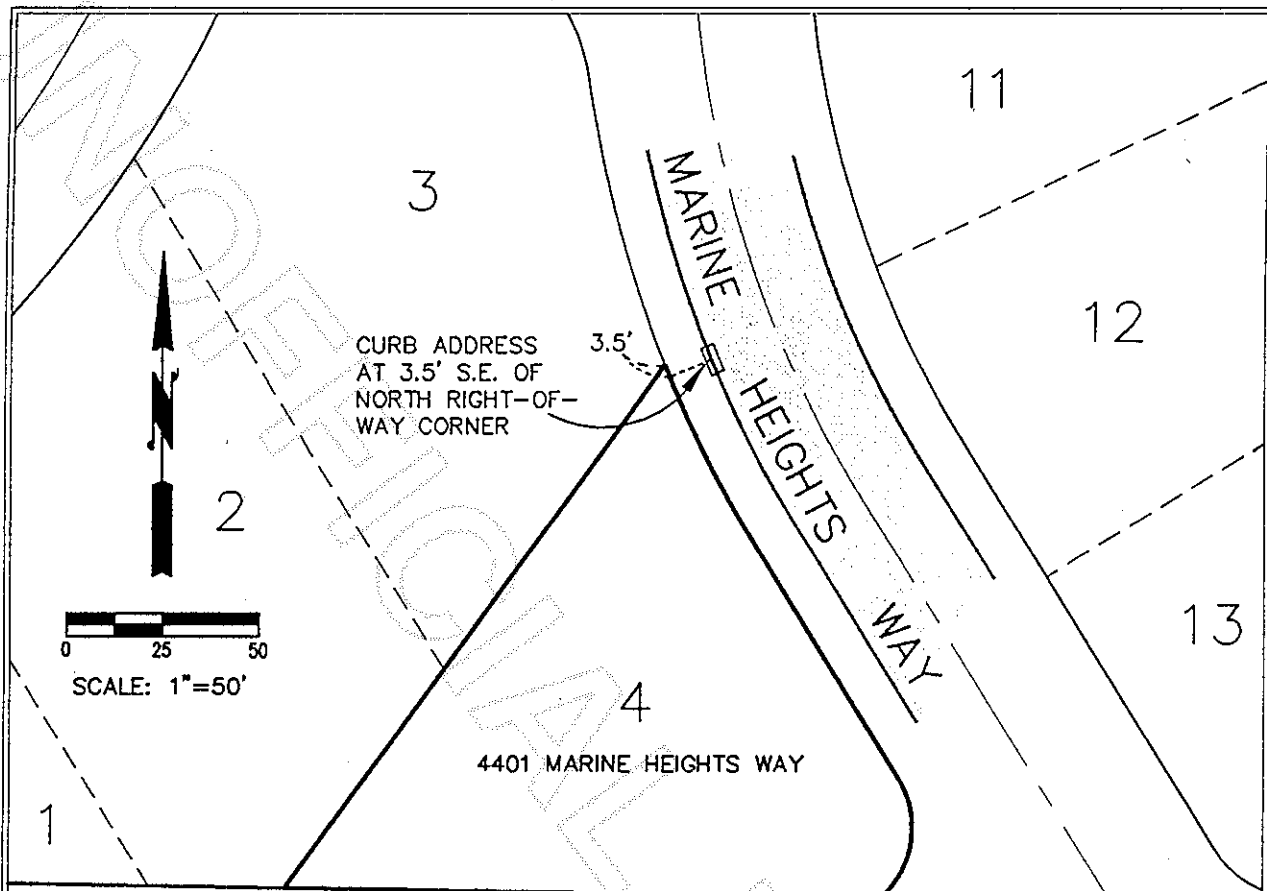


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PLAT OF
ANACO BEACH

L O T 5 5

5

LOT 4

PLAT of MARINE HEIGHTS

ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER
SHALL NOT EXCEED 25.7 FEET



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8

9

4406 MARINE HEIGHTS WAY

10

CURB ADDRESS
AT 8' WEST OF LOTS
9 & 10 RIGHT-OF-
WAY CORNER

8'

0 25 50

SCALE: 1"=50'

MARINE HEIGHTS WAY

3

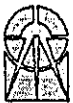
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LOT 9

PLAT of MARINE HEIGHTS

ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER

SHALL NOT EXCEED 32.1 FEET



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3'



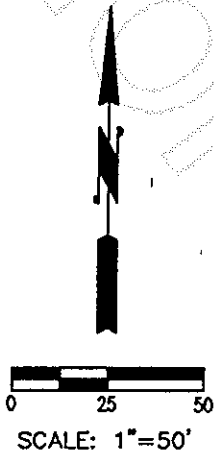
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UNOFFICIAL

FILED

BOOK

NUMBER

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4404 MARINE HEIGHTS WAY

CURB ADDRESS AT
7' N.W. OF SOUTHERLY
CORNER LOT 10

MARINE HEIGHTS
WAY

LOT 10

PLAT of MARINE HEIGHTS

ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER

SHALL NOT EXCEED 55.8 FEET



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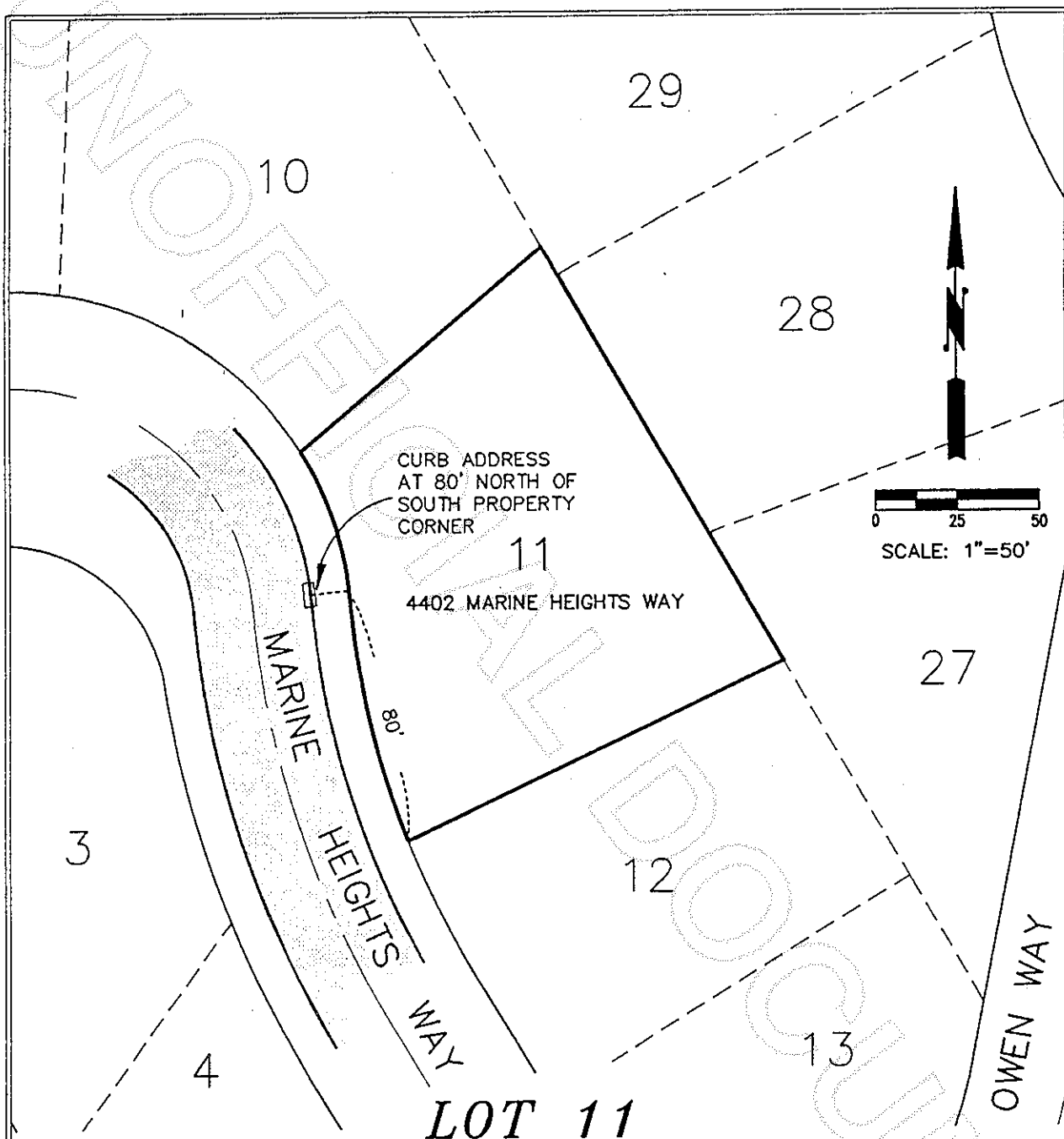


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LOT 11

PLAT of MARINE HEIGHTS

**ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER
SHALL NOT EXCEED 42.3 FEET**



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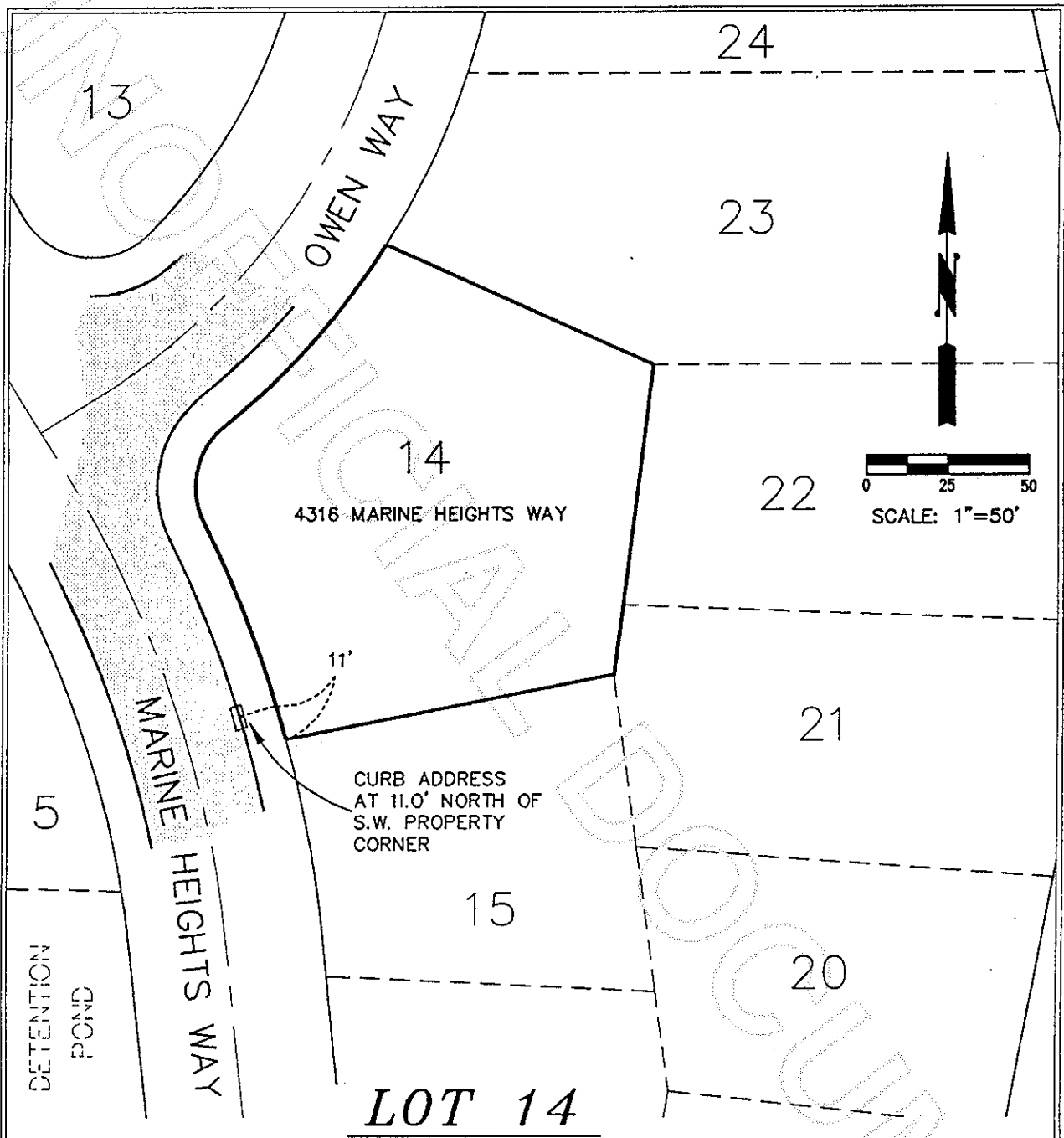


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LOT 14

PLAT of MARINE HEIGHTS

**ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER**

SHALL NOT EXCEED 39.9 FEET



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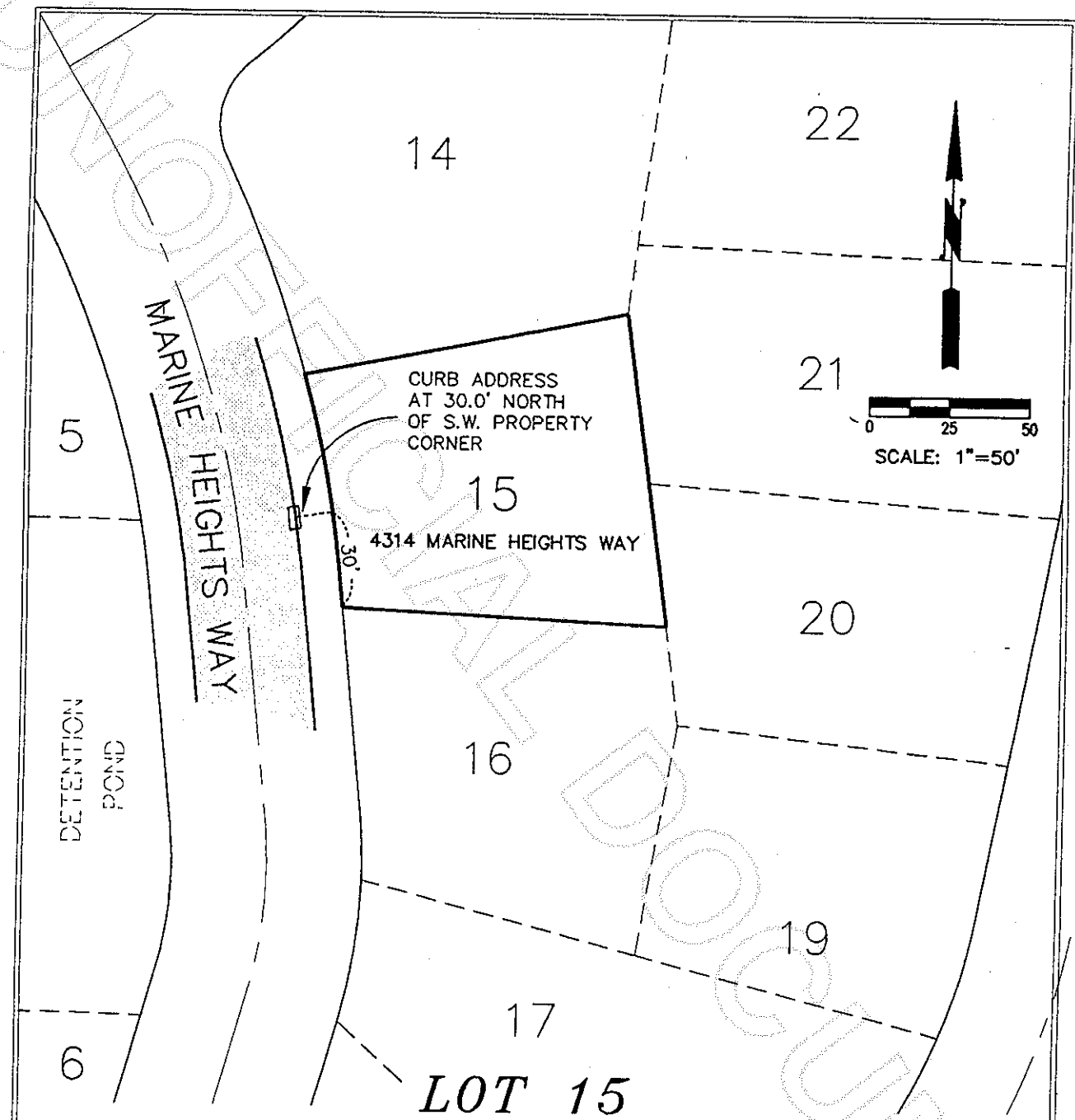
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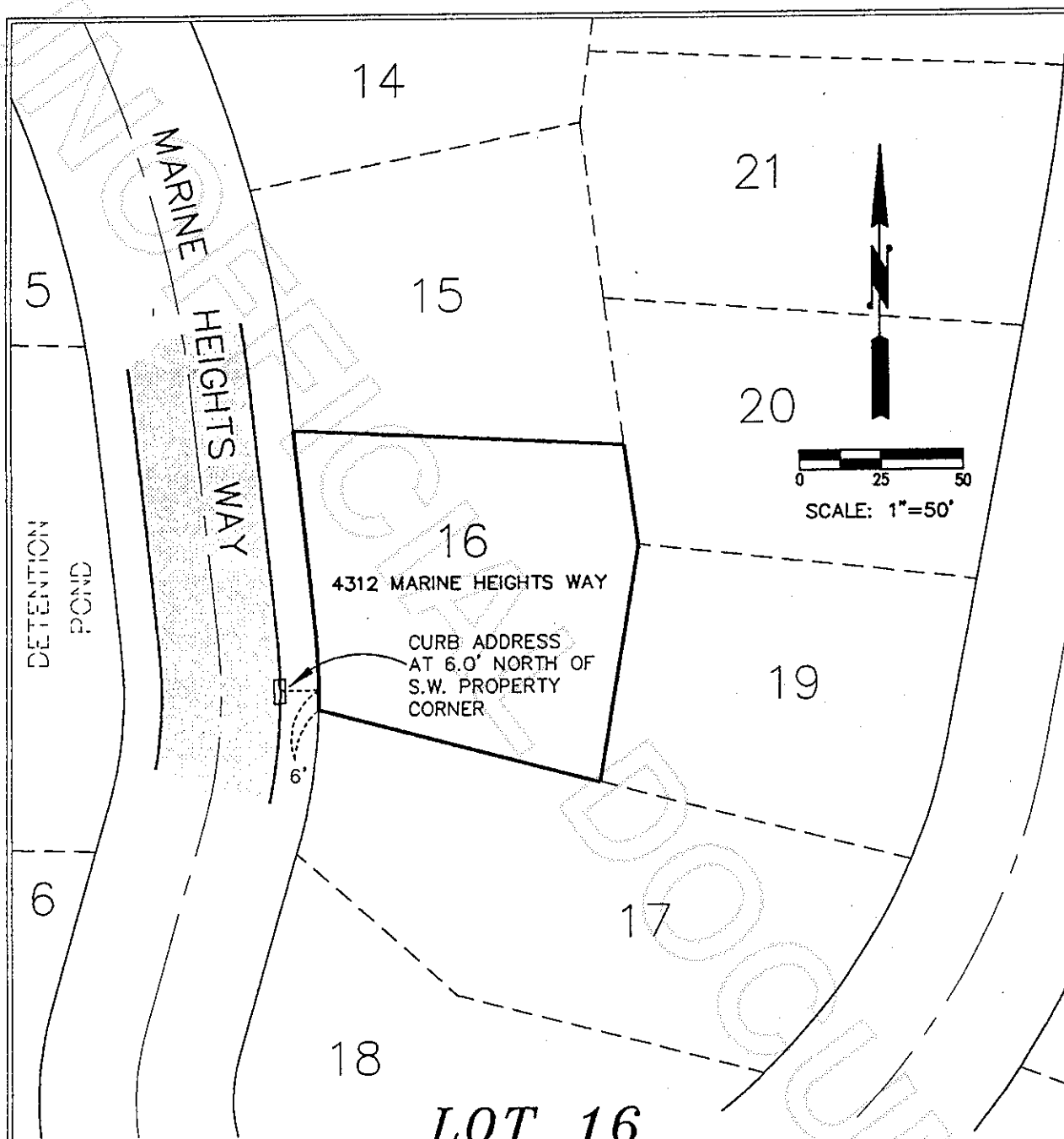
PLAT of MARINE HEIGHTS

**ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER
SHALL NOT EXCEED 35.0 FEET**



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LOT 16

PLAT of MARINE HEIGHTS

**ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER
SHALL NOT EXCEED 29.6 FEET**



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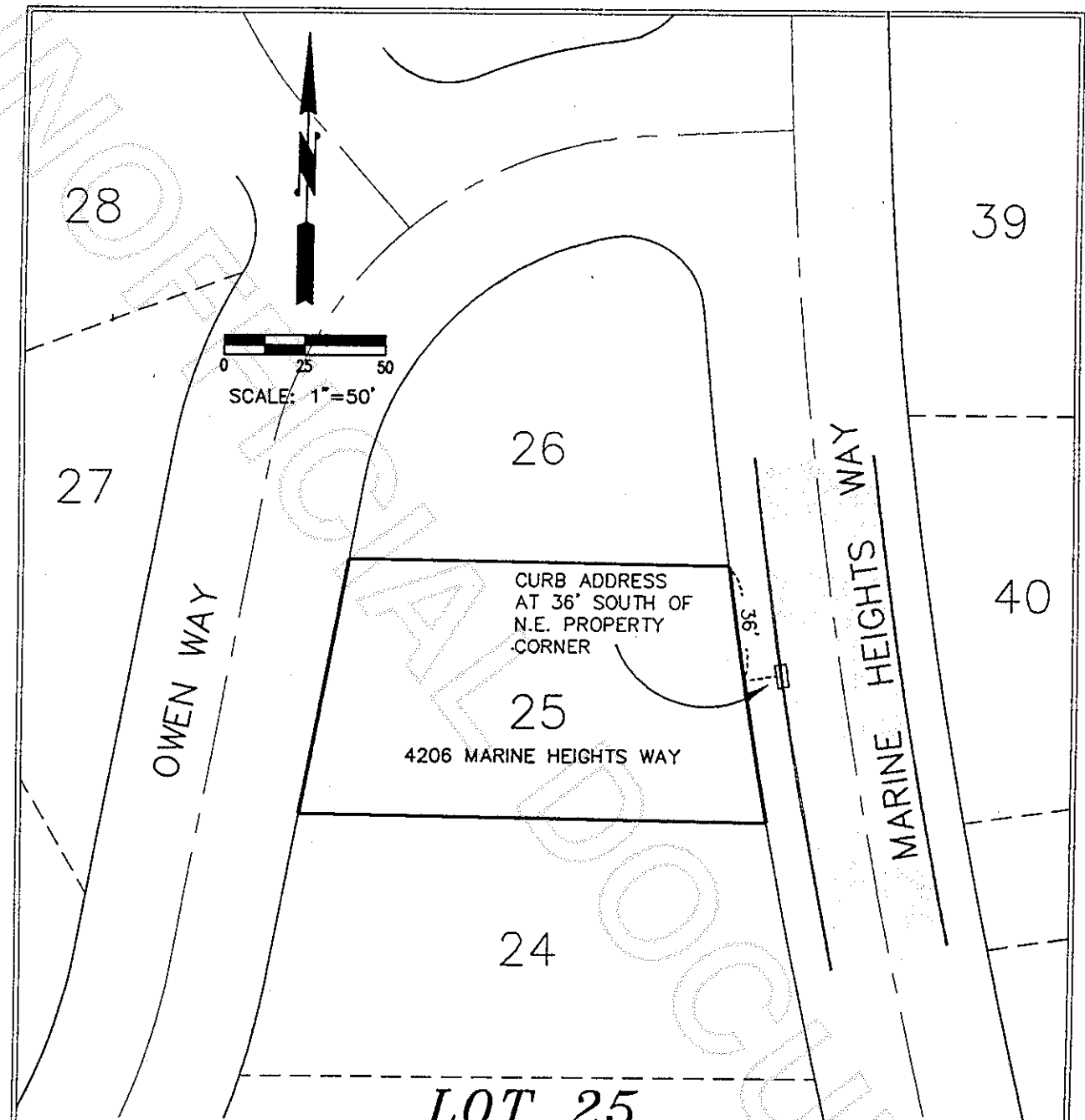


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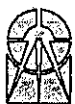
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LOT 25

PLAT of MARINE HEIGHTS

**ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER
SHALL NOT EXCEED 12.5 FEET**



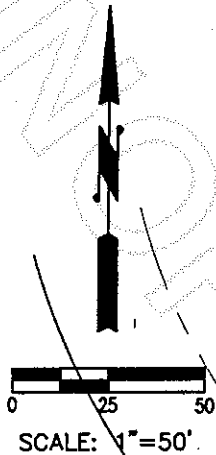
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28

36

CURB ADDRESS
AT WEST END
DRIVEWAY
CULVERT

39

26

4203 OWEN WAY

40

OWEN WAY

25

MARINE HEIGHTS WAY

LOT 26

PLAT of MARINE HEIGHTS

ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER
SHALL NOT EXCEED 23.3 FEET



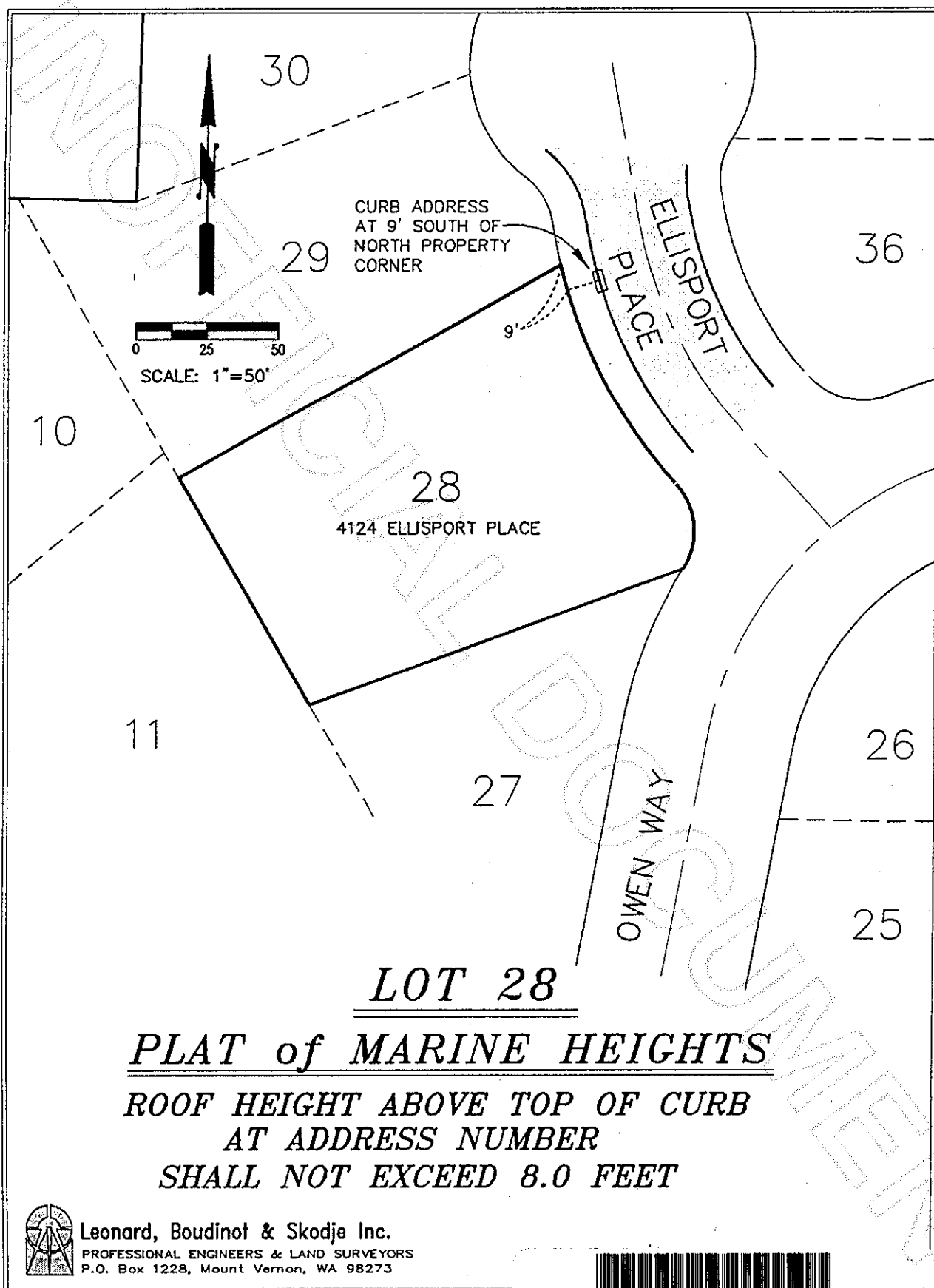
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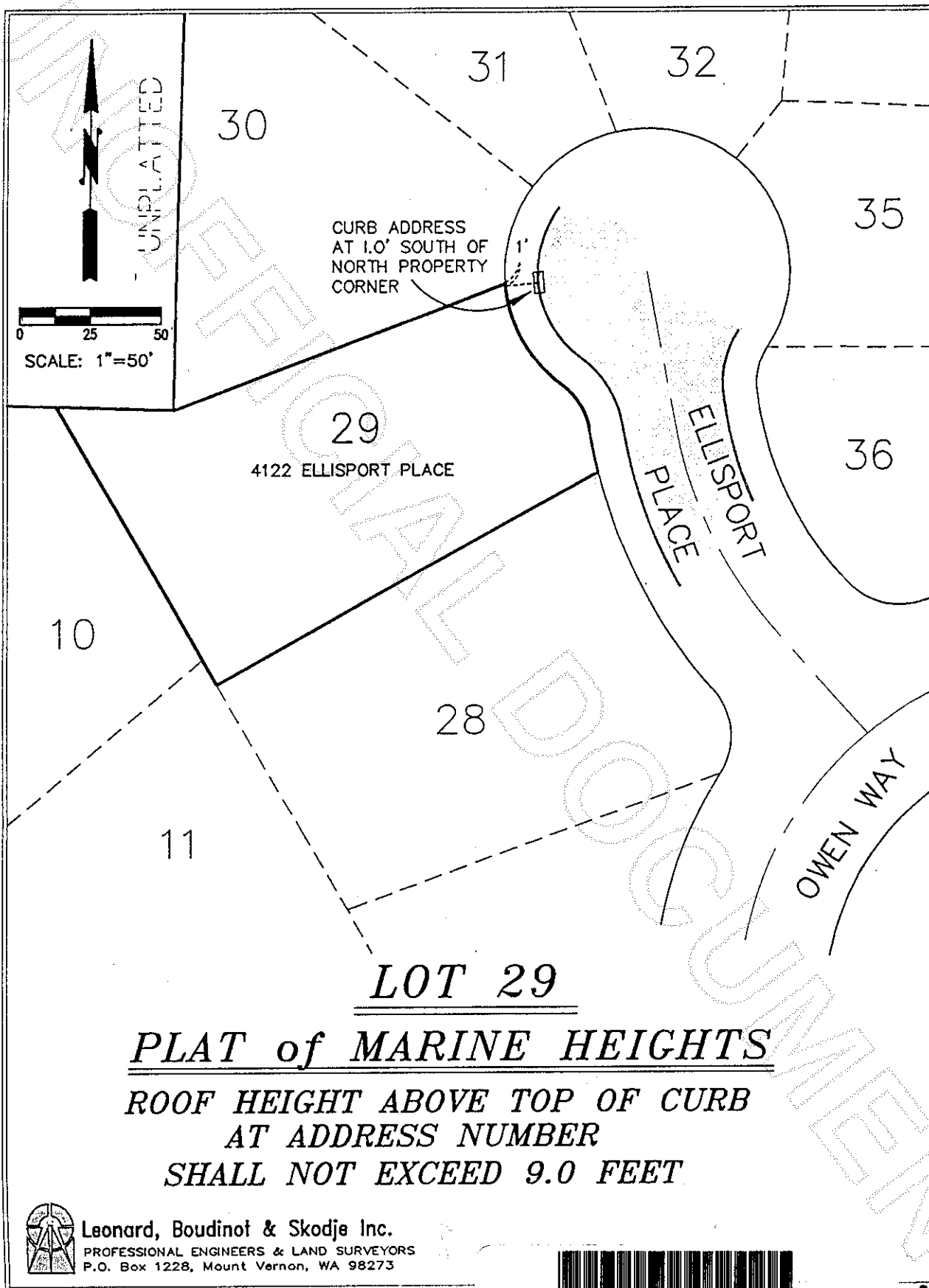
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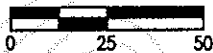
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UNPLATTED



SCALE: 1"=50'

CURB ADDRESS
AT 1.0' SOUTH OF
N.E. PROPERTY
CORNER

30
4118 ELLISPORT PLACE

33

32

34

35

36

29

10

LOT 30

ELLISPORT
PLACE

PLAT of MARINE HEIGHTS

ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER

SHALL NOT EXCEED 9.0 FEET



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31

4114 ELLISPORT PLACE

32

33

34

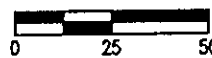
35

36

30

29

CURB ADDRESS
AT LOTS 30 & 31
RIGHT-OF-WAY
CORNER



SCALE: 1"=50'

ELLISPORT
PLACE

LOT 31

PLAT of MARINE HEIGHTS

ROOF HEIGHT ABOVE TOP OF CURB
AT ADDRESS NUMBER
SHALL NOT EXCEED 16.7 FEET



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MAINTENANCE REQUIREMENTS FOR MARINE HEIGHTS DETENTION PONDS

MAINTENANCE COMPONENT	DEFECT	CONDITIONS WHEN MAINTENANCE IS NEEDED	RESULTS EXPECTED WHEN MAINTENANCE IS PERFORMED
1. Ponds - General	Trash & Debris	Any trash or debris which exceeds 1 cubic foot/1000 square feet (equal to the volume of a standard size office garbage can). In general, there should be no evidence of dumping.	Trash and debris cleared from site.
	Poisonous Vegetation	Any poisonous vegetation which may constitute a hazard to maintenance personnel or the public, e.g. tansy, poison oak, stinging nettles, devil's club.	No danger of poisonous vegetation where maintenance personnel or the public might normally be. Coordinate with the local county health department.
	Pollution	1 gallon or more of oil, gas or other contaminants or any amount found that could 1) cause damage to plant, animal or marine life, 2) constitute a fire hazard, 3) be flushed downstream during storms or 4) contaminate ground water.	No contaminants present other than a surface film. Coordinate with the local county health department.
	Unmowed grass/ground cover	Mowing is needed when the cover exceeds 18 inches in height.	When mowing is needed grass or ground cover should be mowed to 2 inches. A dense grass cover must be maintained on slopes, and in dry ponds on the bottom as well.
	Rodent holes	Any evidence of rodent holes if facility is acting as a dam or berm, or any evidence of water piping through dam or berm via rodent holes.	Rodents destroyed and dam or berm repaired. Coordinate with Anacortes Public Works Department.
	Insects	When insects such as hornets or wasps interfere with maintenance activities.	Insects destroyed or removed from site.
	Tree growth	Tree growth does not allow maintenance access or interference with maintenance activity. If trees are not interfering with access, leave trees alone. No trees may weaken or make ineffective any berm which functions as a dam.	Trees do not hinder maintenance activities.
Side Slopes of Pond	Erosion	Eroded damage > 2 inches deep where cause of damage is still present or where there is potential for continued erosion.	Slopes should be stabilized with appropriate erosion control BMP's, e.g. seeding, plastic covers, rip rap.
Storage Area, Forebay	Sediment	Accumulated sediment that exceeds 10% of the designed forebay depth, or every three years.	Sediment cleaned out to designed pond shape and depth; reseeded if necessary to control erosion.
Pond Dikes	Settling	Any part of the dike which has settled 4 inches lower than the design elevation.	Dike should be built back to the design elevation.
Emergency Overflow, Spillway	Rock missing	Only 1 layer of rock above native soil in an area > 5 square feet or any exposure of native soil.	Replace rock to design standards.
2. Debris Barriers - General	Trash and Debris	Trash or debris that is plugging > 20% of the openings in the barrier.	Barrier clear to receive capacity flow.
Metal	Damaged/missing bars	Bars are bent out of shape \geq 3 inches.	Bars in place with no bend > 3/4".
		Bars or entire barrier is missing.	Bars in place according to design.
		Bars are loose and rust is causing 50% deterioration to any part of the barrier.	Repair or replace barrier to standards.



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Access Roads, Easements-General	Trash and Debris	Exceeds 1 cubic foot per 100 square feet or the amount that would fill a would fill a standard size garbage can.	Trash and debris cleared from site.
	Blocked roadway	Debris which could damage vehicle tires. Obstructions which reduce clearance above road surface to < 14 feet. Any obstruction restricting access to a 10 - 12 foot width for a distance of ≥ 12 feet or any point restricting access to a < 10 foot width.	Roadway free of such debris. Roadway overhead clear to 14 feet high. Obstruction moved to allow at least a 12 foot access route.
	Settlement, potholes, mushy spots, ruts	When any surface exceeds 6 inches in depth and 6 square feet in area. In general, any surface defect which prevents or hinders maintenance access.	Road surface uniformly smooth with no evidence of potholes, settlement, mushy spots or ruts.
	Vegetation in surface	Weeds growing in the road surface that are ≥ 6 inches tall and < 6 inches apart with a 400 square foot area.	Road surface free of weeds taller than 2 inches.
	Erosion damage	Erosion within 1 foot of the roadway ≥ 8 inches wide and 6 inches deep.	Shoulder free of erosion and matching the surrounding road.
	Weeds and brush	Weeds and brush exceed 18 inches in height or hinder maintenance access.	Weeds and brush cut to 2 inches in height or cleared in such a way as to allow maintenance access.
Control Manhole	Trash and Debris	Any trash or debris. There should be no evidence of blockage.	Trash and debris cleared from manhole.
	Mechanical	Orifices shall be clear and in good working order with no evidence of damage, wearing or corrosion. Chain/handle shall be properly connected. Gate fully functional. Manhole lid securely bolted down.	Repair or replace to design standard. Repair or replace to design standard. Repair or replace to design standard. Repair or replace to design standard.



CHECKLIST FOR MARINE HEIGHTS DETENTION PONDS REQUIREMENTS

MAINTENANCE COMPONENT	OBSERVATION YES	NO	CONDITIONS WHEN MAINTENANCE IS NEEDED	MAINTENANCE TO BE PERFORMED (IF ANY)
1. Ponds - General			Any trash or debris which exceeds 1 cubic foot/1000 square feet (equal to the volume of a standard size office garbage can)? In general, there should be no evidence of dumping.	
			Any poisonous vegetation which may constitute a hazard to maintenance personnel or the public, e.g. taro, poison oak, stinging nettles, devil's club?	
			Is there 1 gallon or more of oil, gas or other contaminants or any amount found that could 1) cause damage to plant, animal or marine life, 2) constitute a fire hazard, 3) be flushed downstream during storms or 4) contaminate ground water?	
			Is mowing needed? (When the cover exceeds 18 inches in height)	
			Is there any evidence of rodent holes, if facility is acting as a dam or berm, or any evidence of water piping through dam or berm via rodent holes?	
			Are there insects such as hornets or wasps which could interfere with maintenance activities?	
			Is there tree growth which does not allow maintenance access or interferes with maintenance activity? (If trees are not interfering with access, leave trees alone.)	
			Are there any trees which weaken or make ineffective any berm which functions as a dam?	
Side Slopes of Pond			Is there eroded damage ≥ 2 inches deep where cause of damage is still present or where there is potential for continued erosion?	
Storage Area, Forebay			Is there accumulated sediment that exceeds 10% of the designed forebay depth?	
Pond Dikes			Is there any part of the dike which has settled 4 inches lower than the design elevation?	
Emergency Overflow, Spillway			Is there evidence of only 1 layer of rock above native soil in an area > 5 square feet or any exposure of native soil?	
2. Debris- Barriers - General			Is there trash or debris that is plugging $> 20\%$ of the openings in the barrier?	
Metal			Are there bars which are bent out of shape ≥ 3 inches?	
			Are there bars or entire barrier(s) missing?	
			Are bars loose and/or is rust causing 50% deterioration to any part of the barrier?	
Access Roads, Easements-General			Is there any trash or debris that exceeds 1 cubic foot per 100 square feet or the amount that would fill a standard size garbage can?	
			Is trash and debris cleared from site?	
			Is roadway free of such debris?	
			Is there debris which could damage vehicle tires?	



MAINTENANCE COMPONENT	OBSERVATION YES	OBSERVATION NO	CONDITIONS WHEN MAINTENANCE IS NEEDED	MAINTENANCE TO BE PERFORMED (IF ANY)
			Is there any obstruction restricting access to a 10 - 12 foot width for a distance of ≥ 12 feet or any point restricting access to a < 10 foot width?	
			Is there any surface which exceeds 6 inches in depth and 6 square feet in area with any surface defect which prevents or hinders maintenance access?	
			Are there weeds growing in the road surface that are ≥ 6 inches tall and < 6 inches apart with a 400 square foot area?	
			Are there any areas of erosion within 1 foot of the roadway ≥ 8 inches wide and 6 inches deep?	
			Are there any weeds and/or brush which exceed 18 inches in height or hinder maintenance access?	
Control Manhole			Any trash, debris or other blockage?	
			Are orifices clear and in working order? Any damage, wearing or corrosion?	
			Is the chain/handle properly connected?	
			Operate gate, is gate functioning correctly?	
			Is manhole lid securely bolted down?	
			POND LOCATION: _____ INSPECTED BY: _____ DATE: _____ DATE SUBMITTED TO CITY PWD: _____	

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