

RESOLUTION NO. 2024-99

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING AN AGREEMENT BETWEEN THE CITY OF MARINA AND SHEA HOMES,
LP, FOR THE MAINTENANCE OF RIGHT OF WAY IMPROVEMENTS WITHIN 8TH
STREET AND THE LINEAR PARK AS SHOWN ON THE PHASE 1B AND PHASE 2 WEST
FINAL MAPS, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE
AGREEMENTS ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL
BY THE CITY ATTORNEY.

WHEREAS, at the regularly scheduled meeting of March 21, 2023 and November 21, 2023, the City Council approved the Phase 1B Promenade Final Map and Phase 2 West Final Map for The Dunes on Monterey Bay Development Project Subdivision. As part of the approval for the Final Maps, right of way had been dedicated to the City for multimodal pathways, lighting and landscape improvements, and;

WHEREAS, Shea Homes ("Developer") has expressed to the City interest in taking over maintenance of proposed improvements within the parcels and streets noted in **Exhibit A**. Maintenance responsibilities to be covered shall consist of all improvements within the areas denoted in Exhibit A including but not limited to landscaping (including irrigation & meter charges), artwork, benches and any lighting not related to public street lighting. Water charges from irrigation will also paid by the Developer. Staff has reviewed the agreement with the Developer (**Exhibit B**) and recommend it for approval, and;

WHEREAS, improvements within the 8th Street Multimodal Pathway, the 8th Street Roundabout, and the linear park along Ocean Bluff/Sand Dune Ave. shall be funded and constructed by the Developer. The Homeowners Association will continue to fully fund and manage the maintenance of these improvements noted above, and;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve an agreement between the City of Marina and Shea Homes, LP, for the maintenance of right-of-way improvements within 8th Street and the Linear Park as shown on the Phase 1B and Phase 2 West Final Maps, and;
2. Authorize the City Manager to execute the agreements on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting held on the 4th day of September 2024, by the following vote:

AYES: COUNCIL MEMBERS: McAdams, McCarthy, Delgado

NOES: COUNCIL MEMBERS: None

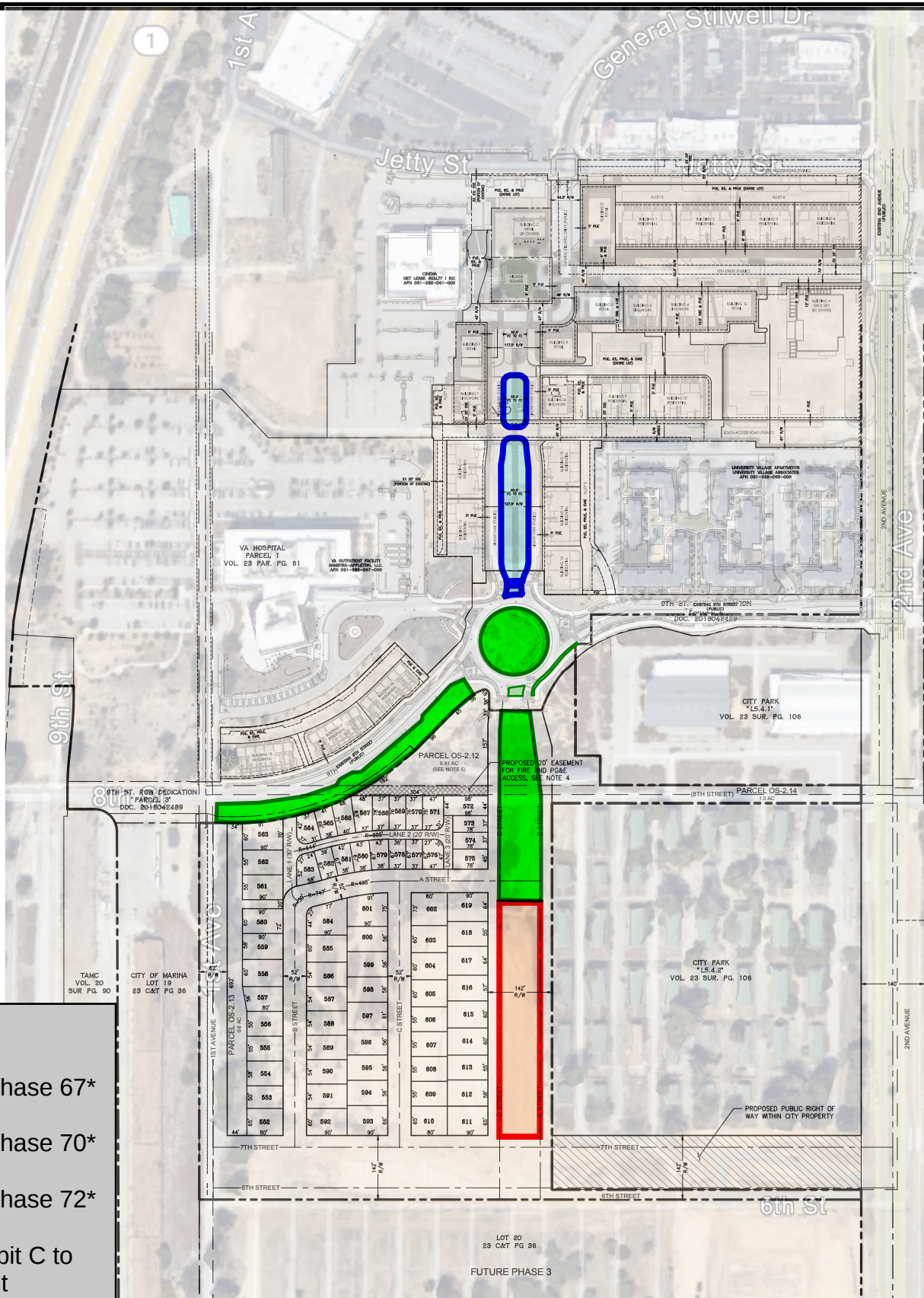
ABSENT: COUNCIL MEMBERS: Biala

ABSTAIN: COUNCIL MEMBERS: None

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, City Clerk



Legend

- Phase 67*
- Phase 70*
- Phase 72*

*See Exhibit C to Agreement



PUBLIC WORKS DEPARTMENT
CITY OF MARINA
211 HILLCREST AVENUE
MARINA, CALIFORNIA 93933

PH: (831) 884-1212
FAX: (831) 384-0425



Right of Way Maintenance Exhibit for Private Improvements within Phase 1B and 2 West

SCALE: NONE

EXHIBIT A

08/26/2024

NO FEE DOCUMENT

Government Code §6103
RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Marina
 211 Hillcrest Avenue
 Marina, CA 93933
 Attn: City Clerk

The Above Space For Recorder's Use Only

RIGHT OF WAY ACCESS AND MAINTENANCE AGREEMENT
 (The Dunes on Monterey Bay - Public Right of Way Maintenance Areas)

THIS AGREEMENT ("**Agreement**") is made and entered into on this _____ day of _____ 2024 by and between the CITY OF MARINA, a California municipal corporation ("**City**") and SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership ("**Owner**").

1. Owner owns real property in the City of Marina, County of Monterey, State of California, more specifically described in the legal description in **Exhibit "A"** attached hereto and incorporated herein by this reference ("**Common Area**").
2. Owner is developing the Common Area as a portion of that certain residential condominium community commonly known as "The Dunes on Monterey Bay". Owner will convey the Common Area to THE DUNES ON MONTEREY BAY ASSOCIATION, a California nonprofit mutual benefit corporation in phases ("**Association**").
3. Owner has or will install: (i) improvements (including but not limited to power and water meters) (collectively, "**Phase 67 Private Improvements**") within City owned median right of way property described and depicted on **Exhibit "B-1"** attached hereto and incorporated herein ("**Phase 67 City Property**"), (ii) improvements (including but not limited to power and water meters) (collectively, "**Phase 70 Private Improvements**") within City owned median right of way property described and depicted on **Exhibit "B-2"** attached hereto and incorporated herein ("**Phase 70 City Property**"), and (iii) improvements (including but not limited to power and water meters) (collectively, "**Phase 72 Private Improvements**") within City owned right of way property described and depicted on **Exhibit "B-3"** attached hereto and incorporated herein ("**Phase 72 City Property**"). The Phase 67 Private Improvements, Phase 70 Private Improvements, and the Phase 72 Private Improvements are collectively or individually referred to herein as the "**Private Improvements**". The Phase 67 City Property, the Phase 70 City Property, and the Phase 72 City Property are collectively or individually referred to herein as the "**City Property**".
4. The City and Owner desire that the Private Improvements within the City Property be maintained by the Responsible Party, in the same manner as the Common Area. Notwithstanding the foregoing, the obligation for Owner to maintain the City Property shall not commence until: (i) the Owner has confirmed that the Private Improvements have been installed within the City Property, and (ii) the City and the Owner have jointly conducted an inspection walk of the City Property (collectively, the "**Maintenance Commencement Date**").
5. The burdens and benefits of this Agreement are intended to be covenants that run with the land, binding Owner, and any subsequent party with ownership or control of the Common Area ("**Responsible Party**").
6. Owner shall be responsible for its obligations under this Agreement as to the Phase 67 Private Improvements, until the date that Owner closes escrow of the first residential lot in DRE Phase 67 (defined in Exhibit "C") under the authority of the California Department of Real Estate Final Subdivision Public Report and transfers the Common Area to the Association, at which time the Association shall assume all rights and obligations of Owner for the Phase 67 Private Improvements under this Agreement ("**Phase 67 Association Transfer Date**"). Owner shall be responsible for

its obligations under this Agreement as to the Phase 70 Private Improvements, until the date that Owner closes escrow of the first residential lot in DRE Phase 70 (defined in Exhibit "C") under the authority of the California Department of Real Estate Final Subdivision Public Report, at which time the Association shall assume all rights and obligations of Owner for the Phase 70 Private Improvements under this Agreement ("**Phase 70 Association Transfer Date**"). Owner shall be responsible for its obligations under this Agreement as to the Phase 72 Private Improvements, until the date that Owner closes escrow of the first residential lot in DRE Phase 72, at which time the Association shall assume all rights and obligations of Owner for the Phase 72 Private Improvements under this Agreement ("**Phase 72 Association Transfer Date**"). The Phase 67 Association Transfer Date, the Phase 70 Association Transfer Date and the Phase 72 Association Transfer Date are individually or collectively referred to herein as "**Association Transfer Dates**". Owner shall have no further rights or obligations under this Agreement for any matters arising after any Association Transfer Date as to any Private Improvement which the Association is deemed the Responsible Party and the Association will be deemed the sole Responsible Party under this Agreement as to such improvements. Each party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement.

7. As of the Maintenance Commencement Date, the Responsible Party shall, at its sole cost and expense, be responsible for maintaining the Private Improvements in accordance with the Declaration of Restrictions (CC&Rs) A Master Planned Community recorded on July 23, 2015, as Document No. 2015041008 in the records of Monterey County, California, as amended by a First Amendment recorded on August 11, 2015, as Document No. 2015044900, as further amended by a Second Amendment recorded on October 7, 2015, as Document No. 2015057565, as further amended by a Third Amendment recorded on May 27, 2016, as Document No. 2016028749, all recorded in the records of Monterey County, California, and any additional amendments thereto (collectively, the "**Declaration**") and all federal, state or local laws and regulations. Given the multiple Association Transfer Dates, both Owner and the Association may both be deemed a Responsible Party under this Agreement as to different portions of the Private Improvements.

8. If the Responsible Party makes any material alterations to the Private Improvements (excluding typical maintenance and plant replacement), the Responsible Party shall gain the approval from the City prior to completing such material alterations and provide as-built plans to the City within 2 weeks of completion of such alternations.

9. The City hereby grants to Owner, for the benefit of the Responsible Party complete access and a right-of-entry onto the City Property to accomplish its obligations under this Agreement.

10. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired.

11. This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Monterey, State of California.

12. This Agreement may be executed in counterparts, each of which when taken together will constitute one fully executed original.

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first written above.

CITY OF MARINA,
a Municipal corporation

SHEA HOMES LIMITED PARTNERSHIP,
a California limited partnership

By: _____
Name: Layne Long
Its: City Manager

By: _____
Name: _____
Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"
Legal Description of Common Area

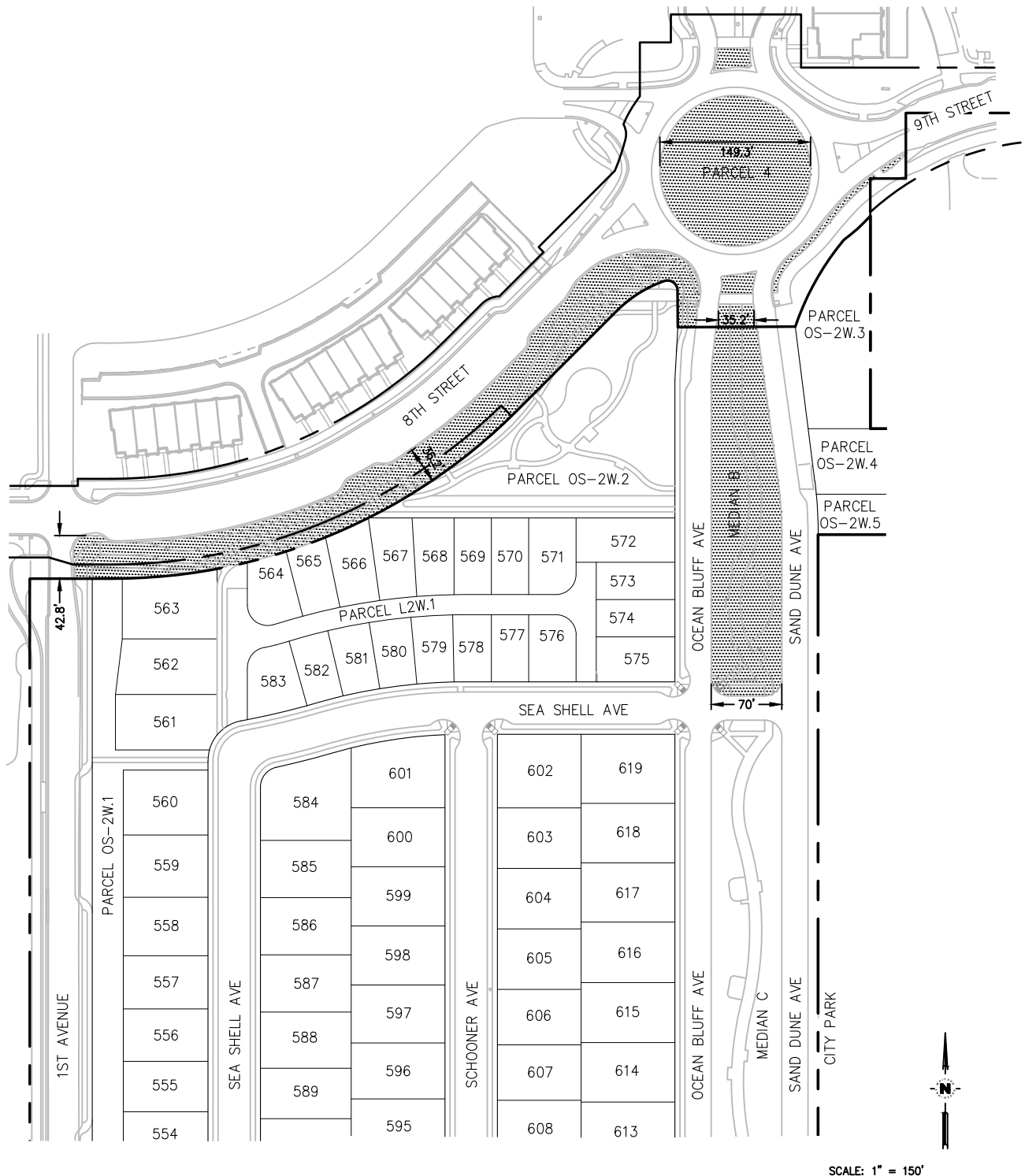
REAL PROPERTY IN THE CITY OF MARINA, COUNTY OF MONTEREY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Parcels L2W.1, OS-2W.1 and OS-2W.2 as shown on that certain Map entitled "Tract No. 1566 The Dunes on Monterey Bay Phase 2 West", filed for record on December 20, 2023, in Volume 24 of Cities and Towns, at Page 89, filed in the Office of the County Recorder, County of Monterey, State of California.

EXHIBIT “B-1”
Depiction of Phase 67 City Property
(Median Landscaping on Ocean Bluff north of Sea Shell and 8th ROW)
[Attached Hereto]

LEGEND

COA MAINTENANCE AREA 67

**EXHIBIT B-1****PHASE 67 MEDIAN LANDSCAPING
THE DUNES ON MONTEREY BAY**

MARINA, CALIFORNIA

JULY 26, 2024

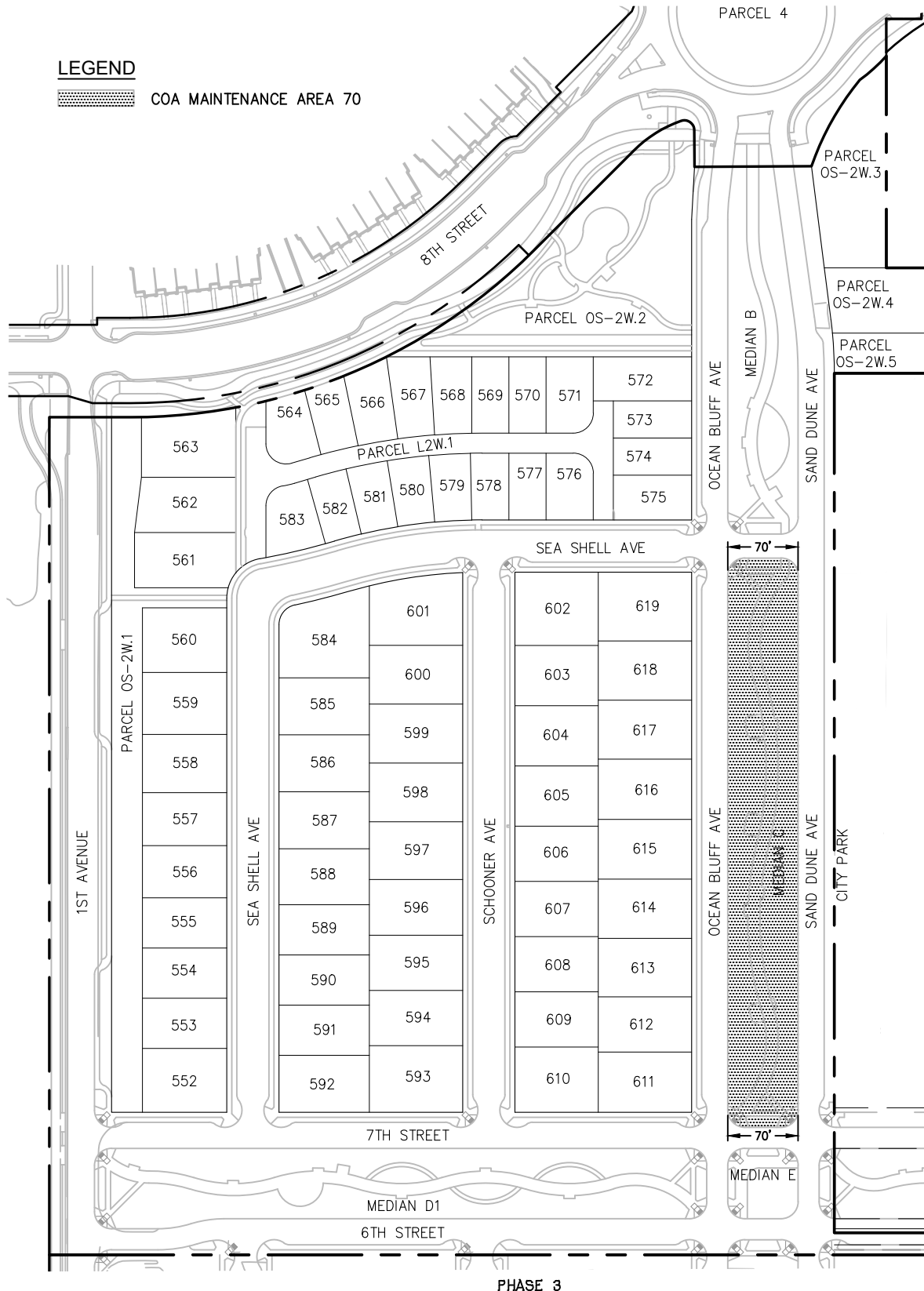


**Civil Engineering +
Land Surveying**
6 Harris Court
Monterey, CA 93940
831.649.5225
whitsonengineers.com

EXHIBIT “B-2”
Depiction of Phase 70 City Property
(Median Landscaping on Ocean Bluff north of 7th)
[Attached Hereto]

LEGEND

 COA MAINTENANCE AREA 70



PHASE 3

SCALE: 1" = 150'

EXHIBIT B-2

PHASE 70 MEDIAN LANDSCAPING THE DUNES ON MONTEREY BAY

MARINA, CALIFORNIA

JULY 26, 2024



Civil Engineering +
Land Surveying
6 Harris Court
Monterey, CA 93940
831.649.5225
whitsonengineers.com

EXHIBIT "B-3"

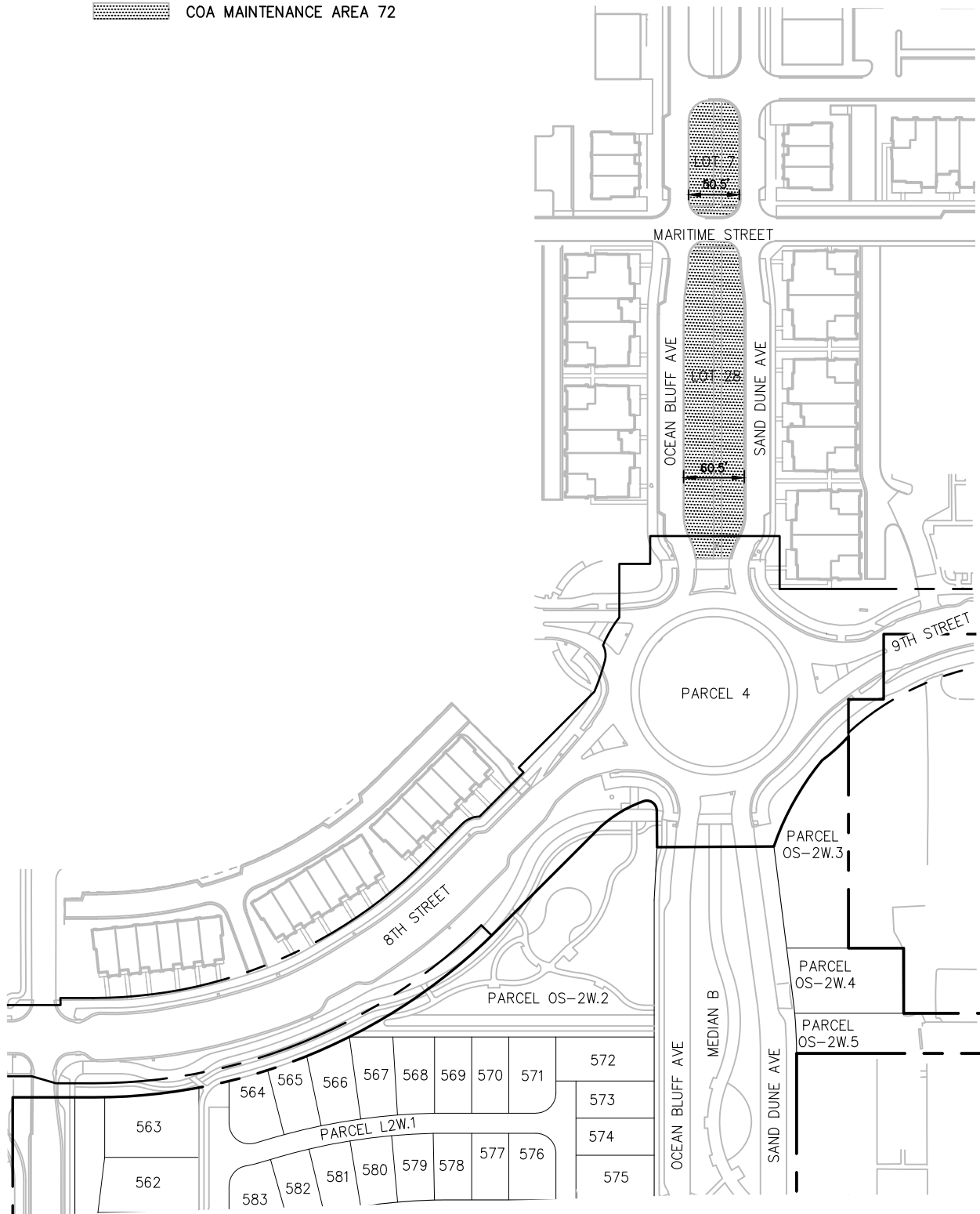
Legal Description and Depiction of Phase 72 City Property

(Improvements within Lots 7 and 28 as shown on that certain Map entitled " Tract 1563 The Dunes Promenade-Phase 1B", filed for record on June 1, 2023, in Volume 24 of Cities and Towns, at Page 86, Official Records of Monterey County.)

[Attached Hereto]

LEGEND

COA MAINTENANCE AREA 72



SCALE: 1" = 150'

EXHIBIT B-3**PHASE 72 MEDIAN LANDSCAPING
THE DUNES ON MONTEREY BAY**

MARINA, CALIFORNIA

JULY 26, 2024



**Civil Engineering +
Land Surveying**
6 Harris Court
Monterey, CA 93940
831.649.5225
whitsonengineers.com

EXHIBIT “C”
Association Transfer Dates – DRE Phases

DRE Phase	Residential Lots in DRE Phase
Phase 67	Lots 566-569, 578-579 as shown on that certain Map entitled “Tract No. 1566 The Dunes on Monterey Bay Phase 2 West”, filed for record on December 20, 2023, in Volume 24 of Cities and Towns, at Page 89, filed in the Office of the County Recorder, County of Monterey, State of California
Phase 70	Lots 608-610, 556, 557, 587, 588 as shown on that certain Map entitled “Tract No. 1566 The Dunes on Monterey Bay Phase 2 West”, filed for record on December 20, 2023, in Volume 24 of Cities and Towns, at Page 89, filed in the Office of the County Recorder, County of Monterey, State of California
Phase 72	Lots 554, 555, 589, 590, 552, 553, 591, 592 as shown on that certain Map entitled “Tract No. 1566 The Dunes on Monterey Bay Phase 2 West”, filed for record on December 20, 2023, in Volume 24 of Cities and Towns, at Page 89, filed in the Office of the County Recorder, County of Monterey, State of California

August 27, 2024

Item No. **10g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of September 4, 2024

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2024-, APPROVING AN AGREEMENT BETWEEN THE CITY OF MARINA AND SHEA HOMES, LP, FOR THE MAINTENANCE OF RIGHT OF WAY IMPROVEMENTS WITHIN 8TH STREET AND THE LINEAR PARK AS SHOWN ON THE PHASE 1B AND PHASE 2 WEST FINAL MAPS, AND; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

RECOMMENDATION:

It is recommended that the City Council consider:

1. Adopting Resolution No. 2024-, approving an agreement between the City of Marina and Shea Homes, LP, for the maintenance of right-of-way improvements within 8th Street and the Linear Park as shown on the Phase 1B and Phase 2 West Final Maps, and;
2. Authorizing the City Manager to execute the agreements on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regularly scheduled meeting of March 21, 2023 and November 21, 2023, the City Council approved the Phase 1B Promenade Final Map and Phase 2 West Final Map for The Dunes on Monterey Bay Development Project Subdivision. As part of the approval for the Final Maps, right of way had been dedicated to the City for multimodal pathways, lighting and landscape improvements.

ANALYSIS:

Shea Homes (“Developer”) has expressed to the City interest in taking over maintenance of proposed improvements within the parcels and streets noted in **EXHIBIT A**. Maintenance responsibilities to be covered shall consist of all improvements within the areas denoted in Exhibit A including but not limited to landscaping (including irrigation & meter charges), artwork, benches and any lighting not related to public street lighting. Water charges from irrigation will also paid by the Developer. Staff has reviewed the agreement with the Developer (**EXHIBIT B**) and recommend it for approval.

FISCAL IMPACT:

Improvements within the 8th Street Multimodal Pathway, the 8th Street Roundabout, and the linear park along Ocean Bluff/Sand Dune Ave. shall be funded and constructed by the Developer. The Homeowners Association will continue to fully fund and manage the maintenance of these improvements noted above.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer
Public Works Department
City of Marina

REVIEWED/CONCUR:

Nourdin Khayata, P.E.
Interim Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina