

Cherne, Curtis

From: Cherne, Curtis
Sent: Thursday, September 08, 2011 8:48 AM
To: 'Vince Carrica'; Dourte, Richard H.; Ron Bohannon
Subject: RE: Sundance Estates Phase 1

Vince,

Seems the design was complete when the agreement was signed. I like the Exhibit A design that is in the settlement agreement except that you could make it wider like the newest CAD dwg.

Curtis

From: Vince Carrica [mailto:VCarrica@tierrawestllc.com]
Sent: Wednesday, September 07, 2011 10:57 AM
To: Dourte, Richard H.; Ron Bohannon
Cc: Cherne, Curtis
Subject: RE: Sundance Estates Phase 1

Richard,

Attached is the settlement agreement along with the sketch of the proposed dissipater that we provided at the time of the agreement. I have also included a CADD drawing of the dissipater that we recently drew up when we were getting pricing to have it constructed.

Vince

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Wednesday, September 07, 2011 8:20 AM
To: Ron Bohannon
Cc: Vince Carrica; Cherne, Curtis
Subject: RE: Sundance Estates Phase 1

Ron,

We don't have a copy of the court order, please send us a copy, I would like to follow the court order.

Thanks,

Richard

From: Ron Bohannon [mailto:rrb@tierrawestllc.com]
Sent: Tuesday, September 06, 2011 12:49 PM
To: Dourte, Richard H.
Cc: Vince Carrica
Subject: Sundance Estates Phase 1

Richard, we have been trying to come up with a energy dissipater for the outfall on Sundance Estates Phase 1. We designed the sketch that was in the court settlement along with a second modification to that design both of which have not been approved. When you get an alternate concept that is approved and designed please send that to us and we will get it placed on the schedule to be funded and built by the bank. The punch list items from Phase One have been completed and all required paperwork for the portion that Tierra West inspected has been submitted to your staff. The only remaining work on Phase One is to build one half of Lyon Blvd from Blue Feather to the North property line. The bank is ready to do a new guarantee for the roadway and will hold off until we hear from you and your staff.

9/8/2011

Call if you have any questions.

Ronald R. Bohannon, P.E.
President
Tierra West LLC (WOBE)
5571 Midway Park Place
Albuquerque, NM 87109
505-858-3100 ext 203
800-245-3102
www.tierrawestllc.com

If this email is spam, report it to www.OnlyMyEmail.com

9/8/2011

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

2007 OCT 19 PM 3: 24

CAPITAL ALLIANCE INVESTMENTS, LLC,
and SOUTHWEST DEVELOPMENT GROUP, LLC,

John A. Flynn

Plaintiffs,

vs.

No. CV-2008-07207

CITY OF ALBUQUERQUE, a Municipal
Corporation and the ALBUQUERQUE
CITY COUNCIL, its Governing Body,

Respondents.

ORDER OF DIMISSAL

THIS MATTER having come before the Court upon the motion of the parties for
dismissal and the parties having entered into a settlement agreement the terms of which are
incorporated herein and the Court finding good cause,

IT IS HEREBY ORDERED that this case is dismissed without prejudice.

Ted Baca 10-16-09

THE HONORABLE TED BACA
DISTRICT JUDGE

Approved:

Timothy V. Flynn-O'Brien
Attorney for Plaintiff
Capital Alliance Investments, LLC

Electronically approved 10/5/2009
Sam Bregman
Attorney for Plaintiff
Southwest Development Group, LLC

Electronically approved 10/5/2009
Michael Garcia, Assistant City Attorney
Attorney for City of Albuquerque

AGREEMENT

This Agreement is entered into as of this the 28th day of March 2009, by and among THE CITY OF ALBUQUERQUE, a municipal corporation ("City"), whose address is set forth below, and Capital Alliance Investments, LLC and Southwest Development Group, LLC.

Background:

(a) Capital Alliance Investments LLC (hereafter "CAI") is the developer of the Sundance Estates Subdivision- Phases I-A and I-B including Sundance Estates, Unit 1, Block 1, Lots 1 Through 49; Block 2, Lots 1 through 26; Block 3, Lots 1 through 29, Block 4, Lots 1P-1 through 20P-1, Lots 21 through 38; Block 5, Lots 1, 2, 10, 11, Lots 13P-1 through 22P-1. Sundance Estates, Unit 1-B, Lots 1 through 53 [also described as Sundance Estates Unit 1--A tract of land lying and situate within the town of Alameda Grant, projected sections 10 and 11 township North, range 2 east, New Mexico principal meridian City of Albuquerque, Bernalillo County, New Mexico, comprising of tracts numbered four (4) and six (6), Sundance Estates as the same is shown on the bulk land plat recorded on the 13th day of December, 2004 in the records of Bernalillo County at Book 2004C, folio. 385 and Unit 1-B, Lots numbered 3, 4, 5, 6, 7, 8, 9, 12, 23, 24 and Tract A, unit one (1) of Sundance Estates as the same is shown and designated on the plat recorded on June 6, 2006 in volume 2006C, folio 205. Together with tract 5 of the bulk land plat of Sundance Estates being the same as shown and designated on the plat filed for record in the office of the Bernalillo County Clerk on December 13, 2004, in volume 2004C, Folio 385] (all hereafter referred to as "Sundance Estates"). Capital Alliance Investments, LLC and Southwest Development Group, LLC own lots and have sold lots in the subdivision. Capital Alliance Investments, LLC and Southwest Development Group, LLC are hereafter collectively referred to as "Developers").

(b) The City is the authority for subdivision approval and the zoning authority for the Sundance Estates.

(c) The City approved the grading plan, preliminary plats and final plat, accepted the subdivision, and building permits of the Sundance Estates subdivision

(d) Some lots have been conveyed to third parties who own lots within the subdivision (collectively referred to as the "Secondary Owners", which term includes their respective agents, employees, directors, managers, members, owners, and shareholders and successors).

(e) A dispute has arisen between Developers and the City concerning the grade from which height of buildings and other structures is to be measured under the Zoning Code, Northwest Mesa Escarpment Plan or other zoning regulations. Developers contend that height should be measured from the approved grade of the lot or building pad as set forth in the approved grading plan. The City has at times contended that height should be measured from original or natural grade. Because the city approved a grading plan with significant fill the parties have agreed that for this subdivision only, the height will be measured from approved grade on the grading plan.

(f) Developers filed a Complaint For Declaratory Relief, Injunctive relief Estoppel and Damages and Notice of Appeal Pursuant To SCRA 1-074 on July 18, 2008 in the District Court for Bernalillo County (2nd Judicial District) as Cause No. CV-2008- 07207.

This Agreement memorializes an agreement reached by the City and Developers.

NOW THEREFORE IT IS AGREED:

1. The City agrees structure height for all lots in Sundance Estates Phases I-A and I-B will be measured from the approved grade as shown on the grading plan. Accordingly the height of homes will be measured from the approved building pad as shown on the approved grading plan. This agreement applies to height measurements under the zoning code, Northwest Mesa Escarpment Plan and any other city plan or zoning regulation. Developer agrees to modify the drainage plan as requested by the City's hydrologist by constructing a new energy dissipater for the pond outflow to Monument as shown on Ex. A hereto.

2. Notwithstanding the foregoing, all plans approved for building permit on or before January 19, 2009 and all building permits previously issued are valid and legal and shall not be challenged by the city under any zoning regulation for height.

3. The rights, covenants and agreements contained in this agreement shall be in perpetuity and shall be binding upon the parties hereto and their successors in interest and assigns and shall run with the land. The City agrees to enter into a Stipulated Memorandum of Agreement setting forth this agreement as to measuring height from approved grade as shown on the approved grading plan and/or to enter a recordable Memorandum of Agreement reflecting the agreements set forth herein.

4. This Agreement constitutes a compromise and settlement of all claims and demands that Developers have against the City arising out of the City's approval of Sundance Estates and subdivision approval. The City denies Developers' claims and nothing contained herein shall be construed as an admission by the City as to the appropriate interpretation of the Northwest Mesa Escarpment Plan as to any other subdivision. Developers agree to dismiss their suit with prejudice once the Stipulated Memorandum of Agreement is recorded in the form attached hereto. If for any reason that form of Memorandum of Agreement proves insufficient to provide official notice of the Agreement the parties agree to execute such further agreement or memorandum as necessary to give notice of the covenants in the Agreement. Moreover, nothing herein shall be construed as a reversal or change of existing City policy or practice in interpreting the Northwest Mesa Escarpment Plan. Notwithstanding City Council's decision, Developers may proceed in view of the City having approved the grading plan, preliminary plats and final plat, accepted the subdivision, and building permits of the Sundance Estates subdivision. Developers agree to dismiss the lawsuit with prejudice once the Settlement Agreement and Memorandum of Agreement are executed.

5. For and in consideration of the covenants and agreements contained herein, and in consideration of Developers' agreement to dismiss the other claims of their lawsuit with prejudice, the City does hereby waive any claim that height in Sundance Estates Phase I-A or I-B

is to be measured from natural grade and any remedies it might have had under that interpretation of the Northwest Mesa Escarpment Plan or any other zoning regulation. This agreement applies to the Sundance Estates only. All parties agree to bear their own costs and attorney's fees.

6. It is the intent of the City and Developers to fully and effectively waive, dismiss and/or release any and all claims that either party may have, or all other persons or entities claiming by, through or under either party, for any and all damage, loss or injury resulting from the matters described in paragraph (e) above existing as of the date of this Agreement (the "Released Claims"). The parties hereby agree that this paragraph 6 shall operate as an absolute legal bar to any and every lawsuit, or claim of every nature, which either party could, or might sustain as against each other, by its principals, agents, employees, or assigns, by reason of the Released Claims. The parties specifically understand and agree that this release does extend to or include claims arising from any act or omission of any party first occurring after the date of this Agreement, including but not limited to those acts or omissions that constitute a violation or breach of the terms of this Agreement, the remaining terms of this Agreement or other agreements between the parties. This release also does not include claims arising out of the failure of any party to perform its covenants and agreements hereunder.

7. Notices. "Notice" means any notice, demand, request, or other communication or document to be provided under this Agreement to a party. The notice shall be in writing and shall be given to the party at its address or telecopy number set forth below or at such other address or telecopy number as the party may later specify for that purpose by notice to the other party. Each notice shall, for all purposes, be deemed given and received: (a) if given by telecopy, when the telecopy is transmitted to the party's telecopy number specified below and confirmation of complete receipt is received by that transmitting party during normal business hours or on the next business day if not confirmed during normal business hours; (b) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (c) if given by a nationally recognized and reputable overnight delivery service, the day on which the notice is actually received by the party; or (d) if given by any other means or if given by certified mail, return receipt requested, postage prepaid, two (2) business days after it is posted with the United States Postal Service, at the address of the party specified below:

City of Albuquerque:

City of Albuquerque
City Attorney
P.O. Box 2248
Albuquerque, NM 87102
Fax: (505) 768-4525

And a copy to:

Albuquerque Development Services
Planning Director
Albuquerque City Planning Dept.

600 - 2nd Street NW
Albuquerque, NM 87103
Fax: (505) 924-3339

Capital Alliance Investments, LLC:

Jeff Watson
Capital Alliance Investments LLC
11024 Montgomery NE, Suite 348
Albuquerque, N.M. 87111
(505) 828-1100
Fax: (505) 823-9441

Southwest Development Group, LLC:

Name: AUGUSTINE C. GRACE
Southwest Development Group, LLC
Address: P.O. Box 93906
Albuquerque, NM 87199-3906
Phone: 505-379-3671

8. Effect. This Agreement shall inure to the benefit of and bind the parties, their successors-in-interest and assigns as if such successors-in-interest and assigns were signatories hereto.

WHEREFORE THIS Agreement has been executed as of the date set forth above.

THE CITY OF ALBUQUERQUE,
A Municipal Corporation

By: [Signature]

Name: MATTHEW POWRA

Title: CODE COMPLIANCE OFFICIAL

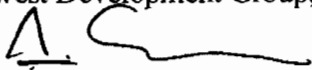
Capital Alliance Investments, LLC

By: [Signature]

Name: JEFF WATSON

Title: MANAGER

Southwest Development Group, LLC

By: 


Name: AUGUSTINE C. GRACE

Title: MANAGING MEMBER

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 4-7, 2009, by Matthew Conrad as Code Compliance official of the City of Albuquerque who personally appeared for the City of Albuquerque, a New Mexico Municipal Corporation known to me or who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the Agreement the entity upon behalf of which the person acted executed this Agreement.

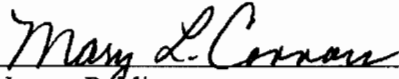

Notary Public

My Commission Expires:
9-4-12

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)



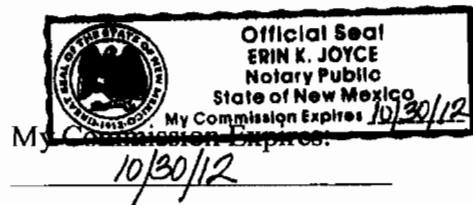
This instrument was acknowledged before me on 3/31, 2009 by Jeffrey Wilson for Capital Alliance Investments, LLC.


Notary Public

My Commission Expires:
May 24, 2009

[illegible]

This instrument was acknowledged before me on march 25, 2009 by Augustine Grace for Southwest Development Group, LLC.



Quikforce
Notary Public

MEMORANDUM OF AGREEMENT

1. AUTHORITY. This Memorandum of Agreement is entered pursuant to the Agreement settling, *Bernalillo County District Court Cause No. CV-2008-07207* and the covenants therein.

2. RECITAL. This agreement concerns a dispute between the City of Albuquerque and Capital Alliance Investments, LLC and Southwest Development Group, LLC developers of the following property: Sundance Estates Subdivision- Phases I-A and I-B including Sundance Estates, [also described as Sundance Estates Unit 1-A tract of land lying and situate within the town of Alameda Grant, projected sections 10 and 11 township North, range 2 east, New Mexico principal meridian City of Albuquerque, Bernalillo County, New Mexico, comprising of tracts numbered four (4) and six (6), Sundance Estates as the same is shown on the bulk land plat recorded on the 13th day of December, 2004 in the records of Bernalillo County at Book 2004C, folio. 385 and Unit 1-B, Lots numbered 3, 4, 5, 6, 7, 8, 9, 12, 23, 24 and Tract A, unit one (1) of Sundance Estates as the same is shown and designated on the plat recorded on June 6, 2006 in volume 2006C, folio 205. Together with tract 5 of the bulk land plat of Sundance Estates being the same as shown and designated on the plat filed for record in the office of the Bernalillo County Clerk on December 13, 2004, in volume 2004C, Folio 385] (all hereafter referred to as "Sundance Estates").

3. PROPERTY. This memorandum concerns the following property owned by Capital Alliance Investments, LLC and Southwest Development Group, LLC. Capital Alliance Investments, LLC is owner of Phase I-A: Unit 1, Block 1, Lots 8-20, 22-25, 27, 28, 44-47; Block 2, Lots 8, 11-18, 20, 24; Block 3, Lots 5, 7-13, 18-21, Block 4, Lots 1P-1, 1P-6 through 1P-20, 1P-21 through 1P-24; Block 5, Lots 14P-1 through 22 P-1. Sundance Estates, Phase I-B: Unit 1-B, Lots 1 through 9, 36 through 45, 47, 48, 51, 52. Southwest Development Group, LLC is the owner or has been the owner of lots 10-35 in Phase I-B or Unit 1-B.

4. PURPOSE. To clarify how height of structures (for example homes or walls) will be measured in Sundance Estates by the City. It is the parties agreement that for purposes of the Albuquerque Zoning Code, Northwest Mesa Escarpment Plan or any other plan that height will be measured from approved grade as shown on the approved grading plan and that all plans approved for building permit on or before January 19, 2009 and all building permits previously issued are valid and legal and shall not be challenged by the City under any zoning regulation for height.

This Memorandum is intended to be recorded and runs with the land for the lots owned by Capital Alliance Investments and Southwest Development Group. The limitation of this memorandum to lots owned by Capital Alliance Investments and Southwest Development Group does not limit rights other properties in Sundance Estates may have under the Agreement. If for any reason this agreement proves insufficient to provide

official notice of the Agreement, the parties agree to execute such further agreement or memorandum as necessary to give notice of the covenants in the Agreement.

5. EFFECT. This Agreement shall inure to the benefit of and bind the parties, their successors-in-interest and assigns as if such successors-in-interest and assigns were signatories hereto.

WHEREFORE this Agreement has been executed as of the date set forth above.

THE CITY OF ALBUQUERQUE
A Municipal Corporation

By: 

Name: MATTHEW CONRAD

Title: CODE COMPLIANCE OFFICIAL

Capital Alliance Investments, LLC

By: 

Name: JEFFREY WATSON

Title: ACTA MEMBER

Southwest Development Group, LLC

By: 

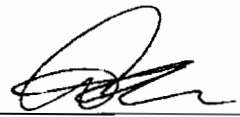
Name: AUGUSTALE C. GRACE

Title: MANAGING MEMBER

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 4-7, 2009, by Matthew Conrad as Code Compliance Officer of the City of Albuquerque who personally appeared for the City of Albuquerque, a New Mexico Municipal Corporation known to me or who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the Agreement the entity upon behalf of which the person acted executed this Agreement.



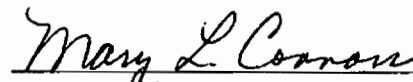
Notary Public

My Commission Expires:
9-4-12

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)



This instrument was acknowledged before me on 3/31, 2009 by Jeffrey Walter for Capital Alliance Investments, LLC.



Notary Public


My Commission Expires:
May 24, 2009

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on March 26, 2009 by Augustine Grace for Southwest Development Group, LLC.



My Commission Expires:
10/30/12



Notary Public



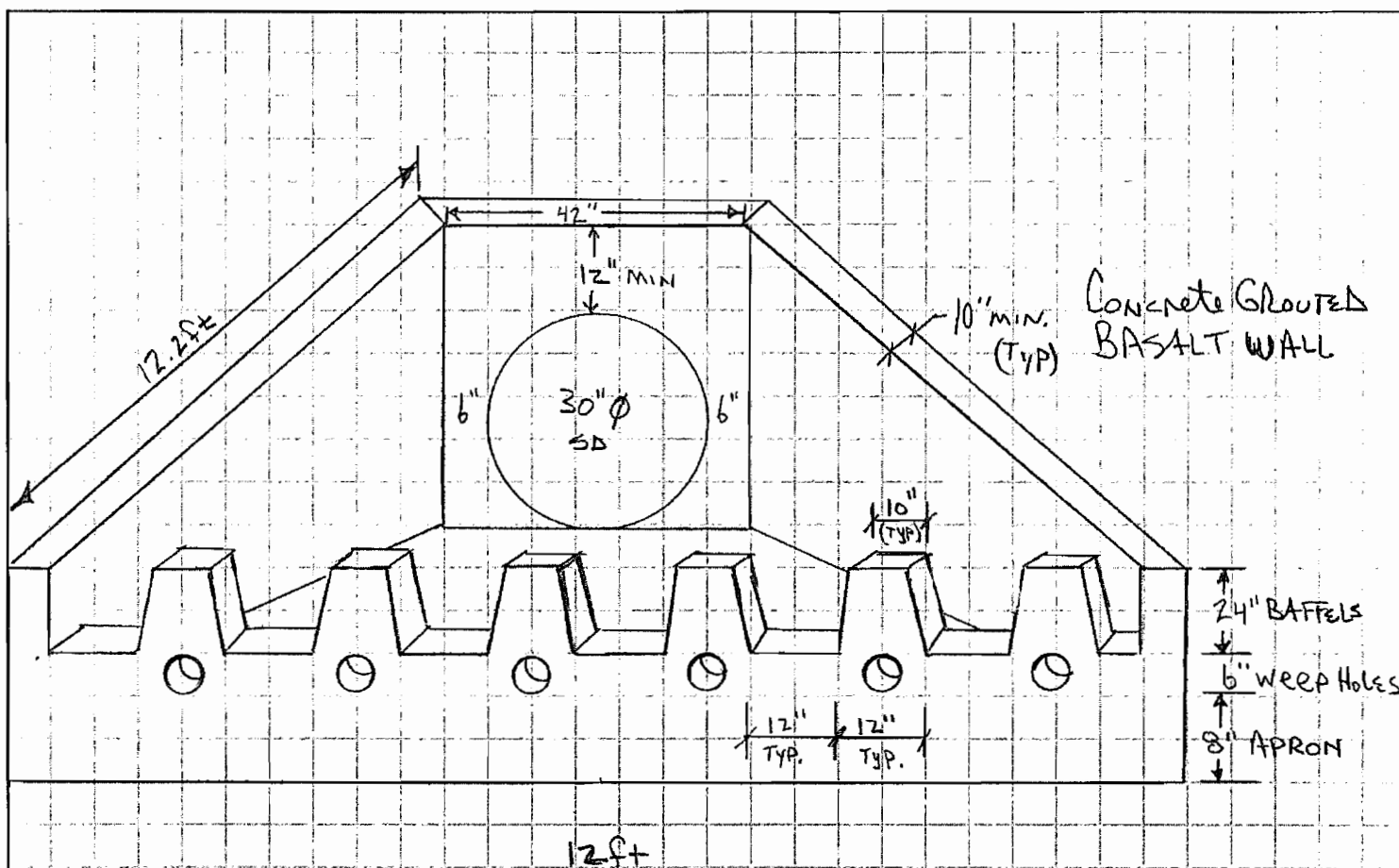
TIERRA WEST, LLC

Project _____ Date _____

Project No. _____

Meeting Purpose _____ Sheet No. ____ of ____

Attendees _____



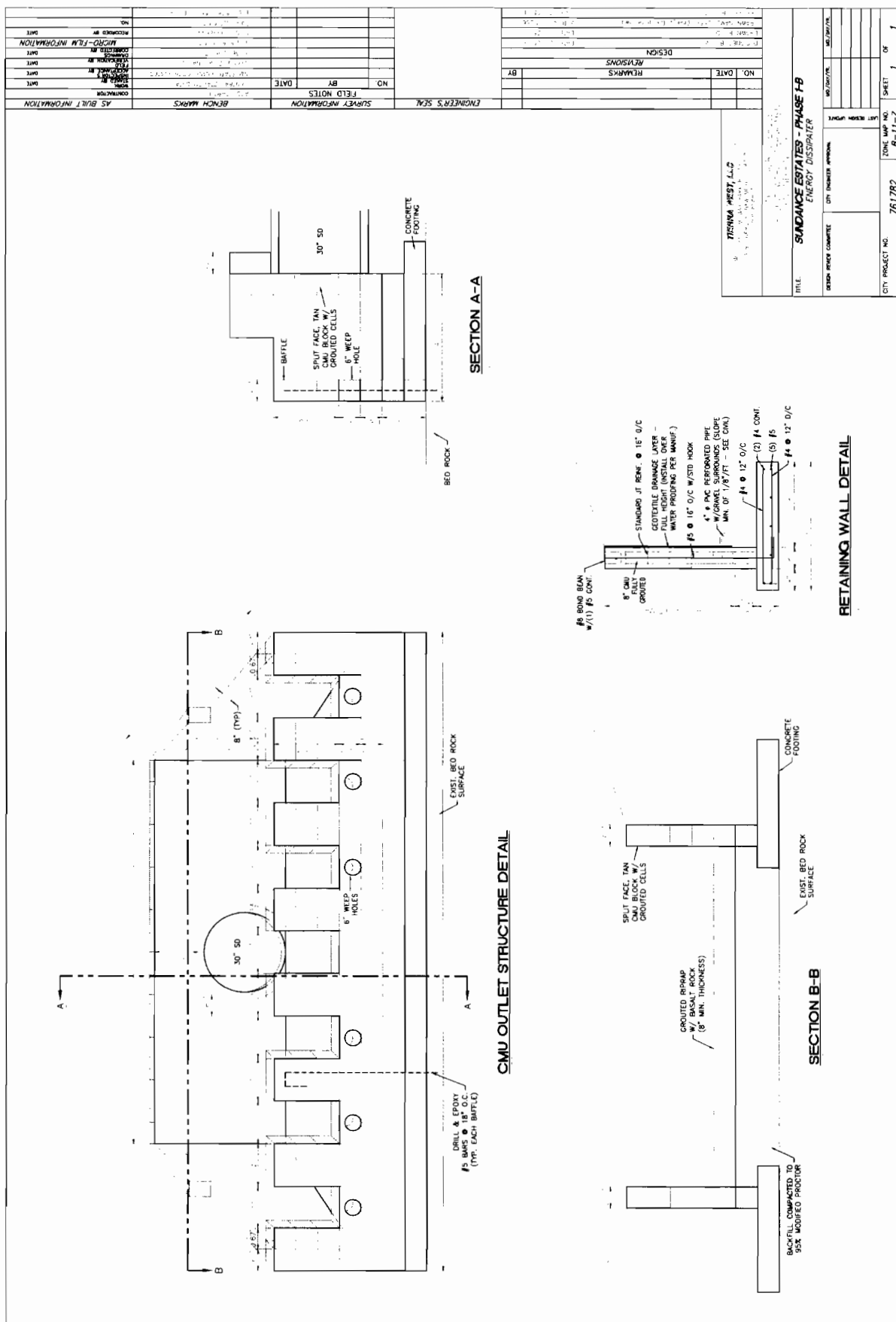
TOTAL VOLUME 5.40 cy \Rightarrow USE 6.0 cy

COSTS:

• 6.0 cy (\$300/cy) + \$1,500⁰⁰ Num/Dispose = \$3,300⁰⁰

• RAP RAP Slope 7054 @ \$25⁰⁰/cy = \$1,750⁰⁰

TOTAL = \$5,050⁰⁰



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|------------------|--------|--------------|---|----|-------|---|------|---------|------------------------|------|---------|------------------|--------|--------------|---|----|-------|---|------|---------|
| CITY PROJECT NO. | 761782 | ZONE MAP NO. | 1 | OF | SHEET | 1 | DATE | 11/1/78 | CITY ENGINEER APPROVAL | DATE | 11/1/78 | CITY PROJECT NO. | 761782 | ZONE MAP NO. | 1 | OF | SHEET | 1 | DATE | 11/1/78 |
| | | | | | | | | | | | | | | | | | | | | |

