

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2020-44

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO SIGN AND EXECUTE TWO PURCHASE AND SALE AGREEMENTS TO OBTAIN LAND ON WHICH TO CONSTRUCT THE GENERALS HILL BOOSTER PUMP PROJECT

WHEREAS, the City of Unalaska has determined that it is necessary to construct the Generals Hill Booster Pump Project; and

WHEREAS, the Generals Hill Booster Pump Project is a component of the approved CMMP; and

WHEREAS, there is insufficient land available in the City's Right-of-Way to place the Booster Pump; and

WHEREAS, an independent appraisal has been performed of the real property to be acquired by the City from Scott C. Darsney; and

WHEREAS, an independent appraisal has been performed of the real property to be acquired by the City from Stewart Robert Warren and Theresa Warren; and

WHEREAS, both parties (Darsney and Warren) are each willing to sell 4,000 square feet of land to the City for the purposes of constructing the Booster Pump Project; and

WHEREAS, acquiring the real property will allow the Project to move forward; and

WHEREAS, funding is available in the Project's budget to support the land purchases.

NOW THEREFORE BE IT RESOLVED that the City Manager is authorized to execute two Purchase and Sale Agreements for land acquisition for the Generals Hill Booster Pump Project for \$11,000 each.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on July 14, 2020.



Dennis M. Robinson
Vice Mayor

ATTEST:



Marjie Veeder, CMC
City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Tom Cohenour, Director, Department of Public Works
Through: Erin Reinders, City Manager
Date: July 14, 2020
Re: Resolution 2020-44: Authorizing the City Manager to sign and execute two Purchase and Sale Agreements to obtain land on which to construct the Generals Hill Booster Pump Project

SUMMARY: This Project will increase potable water service pressure on the upper elevations of Generals Hill to industry standard, reducing the potential for customers to lose water service due to low pressure and water distribution system contamination due to backflow. Resolution 2020-42 will authorize the City Manager to enter into property acquisition agreements so that the Project can be constructed.

PREVIOUS COUNCIL ACTION: Council originally funded a Generals Hill Booster Pump Project via the FY2009 Budget Ordinance 2008-08, adopted May 27, 2008, providing \$187,600 for the Project (MUNIS Project WA901). Due to issues with land acquisition, the Project was closed out via Resolution 2015-57, adopted July 15, 2015.

The current Project (MUNIS Project WA18A) was initially funded with \$21,600 from the Water Proprietary Fund via the FY18 CMMP and Capital and Operating Budget Ordinance 2017-07, adopted on May 23, 2017. An additional \$200,000 from the Water Proprietary Fund was included in the FY19 CMMP and Capital and Operating Budget Ordinance 2018-04, adopted on May 22, 2018. The FY20 CMMP and Capital and Operating Budget Ordinance 2019-07, adopted May 28, 2019, included an additional \$844,400 from the Water Proprietary Fund.

BACKGROUND: The City water utility serves 9 residential units on the upper portion of Generals Hill. Water pressure in this area has, for decades, been consistently lower than required standards. This project will rectify life/safety issues surrounding the low water pressure at the 9 residences. The current pressure at the top fire hydrant on Generals Hill is less than 20 PSI while the industry standard is 40-50 PSI. Low water pressure increases the likelihood of backflow into the distribution system resulting in contamination of the potable water supply. A robust water service at the hydrant(s) is essential for firefighting needs.

DISCUSSION: Resolution 2020-44 authorizes the City Manager to execute two Purchase and Sale Agreements for an equal sized portion (45' x 90' = 4,050 SF) from each of the two parcels at the appropriate elevation to construct the Project. One lot is owned by Mr. Darsney and the other by Mr. and Mrs. Warren. The City utilized the services of Appraisal Company of Alaska to determine the fair market value of both parcels. An offer letter was sent to both parties and both have agreed to a purchase price of \$11,000 each for their respective 4,050 SF portions. A map showing the two lots and the proposed location for the Pump Station is attached as an exhibit to each of the two Purchase and Sale Agreements, also attached. The City will obtain a total of 8,100 SF [2 x (45' x 90') = 8,100].

ALTERNATIVES: In order to construct the Project and cure the life/safety issues on Generals Hill created by low water pressure, the City must procure property. The properties have been selected based on engineering analysis of pipe size, water pressure needs, and elevation constraints as well as optimal service flow. Staff has looked for the means to move the project forward for the past decade and the Resolution before Council is the most constructible solution to be found.

FINANCIAL IMPLICATIONS: Funding for the property acquisition will come from the Project's budget, MUNIS code 5112-5553-57100 WA18A. There is \$143,050 available in the Land line item to support the \$22,000 total cost for both parcels.

LEGAL: N/A

STAFF RECOMMENDATION: I recommend approval of Resolution 2020-44 in order to move the project into final design and construction.

PROPOSED MOTION: I move to approve Resolution 2020-44.

CITY MANAGER COMMENTS: I support Staff's recommendation.

ATTACHMENTS:

1. Purchase and Sale Agreement for a Portion of Lot 4A-1 of Re-Plat No. 89-1 between the City of Unalaska and Scott C. Darsney; Tax Lot ID 06-05-401
2. Purchase and Sale Agreement for a Portion of Lot 4B-1 of Re-Plat No. 89-1 between the City of Unalaska and Stewart Robert Warren and Theresa A. Warren; Tax Lot ID 06-05-403

**PURCHASE AND SALE AGREEMENT
FOR A PORTION OF LOT 4A-1**

WHEREAS, the City of Unalaska desires to construct a water pumping station; and

WHEREAS, the City has determined that the best site for the station requires the use of approximately 4,000 square feet of each of Lots 4A-1 and 4B-1, according to Re-Plat No. 89-1; and

WHEREAS, Lot 4A-1 consists of 29,392 square feet and an appraisal obtained by the City, dated July 8, 2019, valued the land at \$75,000 if vacant and improved with utilities; and

WHEREAS, this valuation represents an average of \$2.55 per square foot; and

WHEREAS, the City desires to acquire 4,000 square feet; and

WHEREAS, the City has offered, subject to the terms herein, the owners of each lots \$11,000 to acquire the land; and

WHEREAS, record owner of Lot 4A-1, Scott C. Darsney, desires to accept the City's offer; and

WHEREAS, conveyance of the acquired land must be accomplished by a re-Re-Plat of Lots 4A-1 and 4B-1, (the "**Re-Plat**"); and

THEREFORE, the City of Unalaska, as "Buyer", and Scott C. Darsney, as "Seller", hereby agree as follows, with the Agreement effective ("Effective Date") when signed by both parties and approved by the Unalaska City Council.

1. **Real Property to Be Sold to Buyer.**

(a) Seller hereby agrees to sell to Buyer and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, 4,000 square feet Lot 4A-1 (the "**Property**") according to Plat No. 89-1, recorded in the Aleutians Recording District, State of Alaska, with the Property approximately as depicted on Exhibit A, attached hereto, and which shall be more specifically described by the Re-Plat by which Seller shall convey the Property to Buyer.

(b) At Closing Seller shall convey to Buyer all of the Property by the Re-Plat.

2. **Price.** The purchase price shall be \$11,000 ("**Purchase Price**"), to be paid in full at Closing by cashier's check or wire transfer.

3. **Buyer's Right of Entry; As is, Where is.**

(a) Upon the Effective Date, Buyer, its employees, agents, and contractors, shall have the right to enter upon the Property, as well as areas of Lot 4A-1 adjacent to the

Property, at all reasonable times and from time to time for the purpose, at Buyer's cost and expense, of inspecting, surveying, making engineering, soil, drainage, and utility evaluations.

(b) Buyer hereby acknowledges and agrees it is fully afforded the opportunity to make such investigations and inspections of the Property and matters related thereto as Buyer and its representatives reasonably desired, and Buyer has entered into this Agreement relying solely upon its own knowledge and investigation of the physical condition of the Property, including without limitation subsurface conditions and environmental matters.

4. Title Insurance. Buyer may, at Buyer's sole option and expense, purchase title insurance.

5. Preparation and approval of Re-Re-Plat.

(a) Buyer shall be responsible for the duties of a "subdivider", as that term is used in Unalaska Code of Ordinances Chapter 8.08, in connection with preparation of, and approval of, the Re-Re-Plat and any preliminary Re-Plat or other requirements of UCO Chapter 8.08. Provided that Buyer pursues all necessary authorizations and approvals in good faith, any failure to obtain such authorization or approval shall not constitute Buyer's default or breach.

(b) Seller agrees to provide Buyer any authorization or document reasonably necessary for Buyer to satisfy subsection (b) and agrees that Buyer may present this Agreement to the Planning Commission to evidence Seller's support for the Re-Re-Plat and Buyer's authority to pursue municipal authorization thereof.

6. Representations and Warranties.

(a) Seller, to the extent of his actual knowledge, hereby represents and warrants to Buyer as follows:

- (i) Seller owns good, marketable, and indefeasible title to the Property and is duly authorized to sell the Property in accordance with the terms of this Agreement, or shall become so on or at Closing;
- (ii) Seller has no knowledge of any violations of laws, regulations, codes, ordinances or requirements affecting the Property;
- (iii) Seller has no knowledge of any actions, suits, claims, assessments or proceedings pending or threatened against or relating to the Property or Seller's ownership thereof;
- (iv) Seller has paid or will pay prior to Closing, through the current year, all taxes, charges debts and other assessments due by Seller with respect to the Property; and
- (v) There will be no recorded or unrecorded liens, security interests, or other encumbrances against any part of the Property which will not be satisfied at or prior to Closing.

(b) Each of the forgoing representations and warranties shall be true and shall remain true at and as of the Closing. If any of Seller's representations or warranties are untrue in any material respect or at any time at or before Closing there is any material change with respect

to the matters represented and warranted, then Seller shall give Buyer prompt written notice thereof and Buyer shall have the right to terminate this agreement prior to Closing by delivering to Seller written notice within 30 days of receiving notice from Buyer.

7. Conditions Precedent. The following matters shall be completed prior to or coincident with Closing or waived in writing by the parties (“**Conditions Precedents to Closing**”):

- (a) Buyer’s inspection and testing of the Property does not reveal any condition making the Property unsuitable for Buyer’s purpose;
- (b) Buyer shall prepare the Re-Plat and shall obtain approval of the Re-Plat by the City of Unalaska Planning Commission and satisfy any conditions imposed by the Planning Commission as a condition of approval of the Re-Plat;
- (c) Seller and Buyer have complied with their respective obligations as set forth in Sections 8 and 9;
- (d) The owner of 4B-1 of Re-Plat 89-1 enters into a substantially similar purchase and sale agreement with Buyer and both purchases and sale close simultaneously; and
- (e) Closing is not later than the Closing Date unless extended in writing by both parties.

8. Seller’s Obligations. Provided that (i) all Conditions Precedent to Closing set forth in Section 7 have been satisfied (or will be at Closing), and (ii) Buyer has delivered (or will at Closing deliver) all items required to be delivered, then Seller shall deliver at or before Closing the following:

- (a) The Re-Plat, duly executed by Seller;
- (b) Possession of the Property to Buyer; and
- (c) All other necessary documents to complete the transaction contemplated by this Agreement.

9. Buyer’s Obligations. Provided that (i) all Conditions Precedent to Closing set forth in Section 7 have been satisfied (or will be at Closing), and (ii) Seller has delivered (or will at Closing deliver) all items required to be delivered, then Buyer shall deliver at or before Closing the Purchase Price as set forth in Section 2 as well as those reimbursements identified in Subsection 15(b).

10. Closing.

(a) Closing shall occur at City Hall or by and through a title company or escrow agent mutually acceptable to Buyer and Seller. Closing shall occur at a mutually agreeable time within 365 days after the Effective Date of this Agreement, or such other date as the parties specify in writing (“**Closing Date**”).

(b) All funds and documents shall be deemed simultaneously delivered on and as of the Closing Date.

11. Risk of Loss, Casualty, and Condemnation. Until purchase and sale of the Property is consummated at Closing and possession thereof is delivered to Buyer, all of the costs, expenses, and risks of ownership, maintenance and loss of the Property shall be borne by Seller, excepting therefrom any damages caused by Buyer's entry onto the Property under Section 3(a). If, prior to Closing, the Property or any part thereof is taken pursuant to an exercise of eminent domain, fire or other casualty such that the taking or damage materially affects Buyer's intended use of the Property, Buyer may terminate this Agreement without further liability.

12. Possession. Exclusive possession of the Property shall be delivered by Seller to Buyer at Closing. Upon delivery of possession to Buyer, the Property shall be in the same condition as it is on the date hereof, ordinary wear and tear excepted.

13. Default, Termination & Remedies.

(a) Buyer and Seller shall have the remedy of specific performance.

(b) Notwithstanding anything to the contrary herein, it shall not be a default or breach hereunder if Seller is unable to obtain release of any lien or encumbrance on the Property existing as of the Effective date. In such event, the Agreement shall terminate without further liability of either party.

(c) In the event that the purchase and sale contemplated by this Agreement is not consummated by the failure, without fault of either party to satisfy the conditions precedent set forth herein, the Agreement shall terminate, without further liability of either party.

(d) Notwithstanding anything to the contrary herein, in the event that the purchase and sale contemplated by this Agreement is not consummated as a result failure of Section 7(a) or 7(b) to be satisfied despite Buyer's good-faith efforts, the Agreement shall terminate. Buyer shall reimburse Seller for Seller's direct out-of-pocket costs, without any allowance for Seller's time and efforts, provided that Seller makes written demand, supported by reasonable documentation of such costs, to Buyer within 90 days of the date of termination. Seller shall have no other remedy.

14. Notices. All notices, waivers, elections, approvals, and demands required or permitted to be given hereunder shall be in writing and shall be personally delivered, mailed by certified mail with postage prepaid, or transmitted by facsimile to the location for each party designated herein. Either party may, by proper notice to the other, designate a different address for the giving of notice. Any notice shall be effective when personally delivered, or, if mailed as provided herein, five business days after deposit, postage pre-paid in the U.S. Mails, or in the case of facsimile notice, when sent if answer back or confirmation received:

Buyer:

City of Unalaska
Attn: Planning Director
P.O. Box 610
Unalaska, AK 99685

Seller:

Scott Darsney
PO Box 323
Unalaska, AK 99685

15. Costs & Taxes.

(a) Unless specifically made the responsibility of one party elsewhere in the Agreement, all other fees and closing costs in connection with the Closing, except for any costs incurred by Seller to maintain Seller's representations and warranties, and specifically Subsection 6(a)(v), shall be borne by Buyer.

(b) Provided all real property taxes due and owing prior to the Closing Date for Lot 4A-1 have been paid, in addition to the Purchase Price, Buyer shall, in addition to the Purchase Price, reimburse Seller for any real property taxes as follows:

- (i) 1/20th of the 2019 property taxes for Lot 4A-1, multiplied the be percentage of the 2019 calendar remaining as of the Effective Date of this Agreement, with said amount to be paid to Seller at Closing;
- (ii) 1/20th of the 2020 property taxes for Lot 4A-1, provided that real property taxes are assessed on Lot 4A-1 prior to recording of the Re-Plat and Seller has paid such taxes in full, to be paid within 30 days following Seller's presentation to Buyer of evidence of payment of such taxes.

16. No Broker. Buyer and Seller each mutually represent and warrant to the other that it has not dealt with any broker or real estate agent regarding the Property or this transaction.

17. Survival of Terms and Waiver. The terms and conditions of this Agreement shall survive the Closing and are expressly intended to bind the parties notwithstanding any statute of limitations. The parties each hereby fully and wholly waive the application of the statute of limitations, if any, to any claim brought by the other party for enforcement of, for breach of, or in connection with this Agreement.

18. Merger; Modification.

(a) This Agreement is an integrated document and constitutes the entire Agreement between the parties with respect to the purchase and sale of the Property. This Agreement is intended as the final expression of the parties' intent with respect to any Agreements between the parties relative to the Property. All prior and contemporaneous (whether oral or written) agreements, statements, representations, and understandings between the parties hereto relating to the purchase and sale of the Property is merged herein.

(b) This Agreement may not be modified except in a writing signed by both parties.

(c) An oral statement or representation shall not form the basis for any form of estoppel or waiver, and both parties agree that oral representations or modifications shall not be asserted in any form.

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

20. Relationship of the Parties. This Agreement shall not authorize either party to act as an agent for the other.

21. Law and Venue. This Agreement shall be governed by and construed under the laws of the State of Alaska, without regard to conflicts of laws principles. Venue of any dispute shall be the Superior Court for the State of Alaska in Unalaska, Alaska.

22. Warranties of Authority.

(a) THIS AGREEMENT SHALL NOT BE BINDING UPON BUYER UNTIL THE UNALASKA CITY COUNCIL APPROVES, BY RESOLUTION, THE TERMS AND CONDITIONS OF THE ACQUISITION.

(b) Subject to subsection (a), each party who executes this Agreement acknowledges, warrants, and represents for the benefit of the other party to this Agreement: (i) that such person is duly authorized and empowered to execute this Agreement on behalf of such party; (ii) that such party has been duly formed and organized and is in good standing; (iii) that all necessary and appropriate resolutions and actions by such party's managers or ordinances by such party's governing body authorizing such party to enter into, execute, and perform this Agreement and the transactions contemplated by this Agreement have been obtained; and (iv) that all steps have been taken and acts performed that are conditions precedent to making this Agreement valid, enforceable, and binding against such party in accordance with its terms and conditions.

23. Signatures; Counterparts. This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument. A facsimile or email signature shall be considered an original signature.

The parties have executed this Agreement effective as of the date first written above.

CITY OF UNALASKA

SCOTT C. DARSNEY

Erin Reinders, City Manager Date

Scott C. Darsney Date

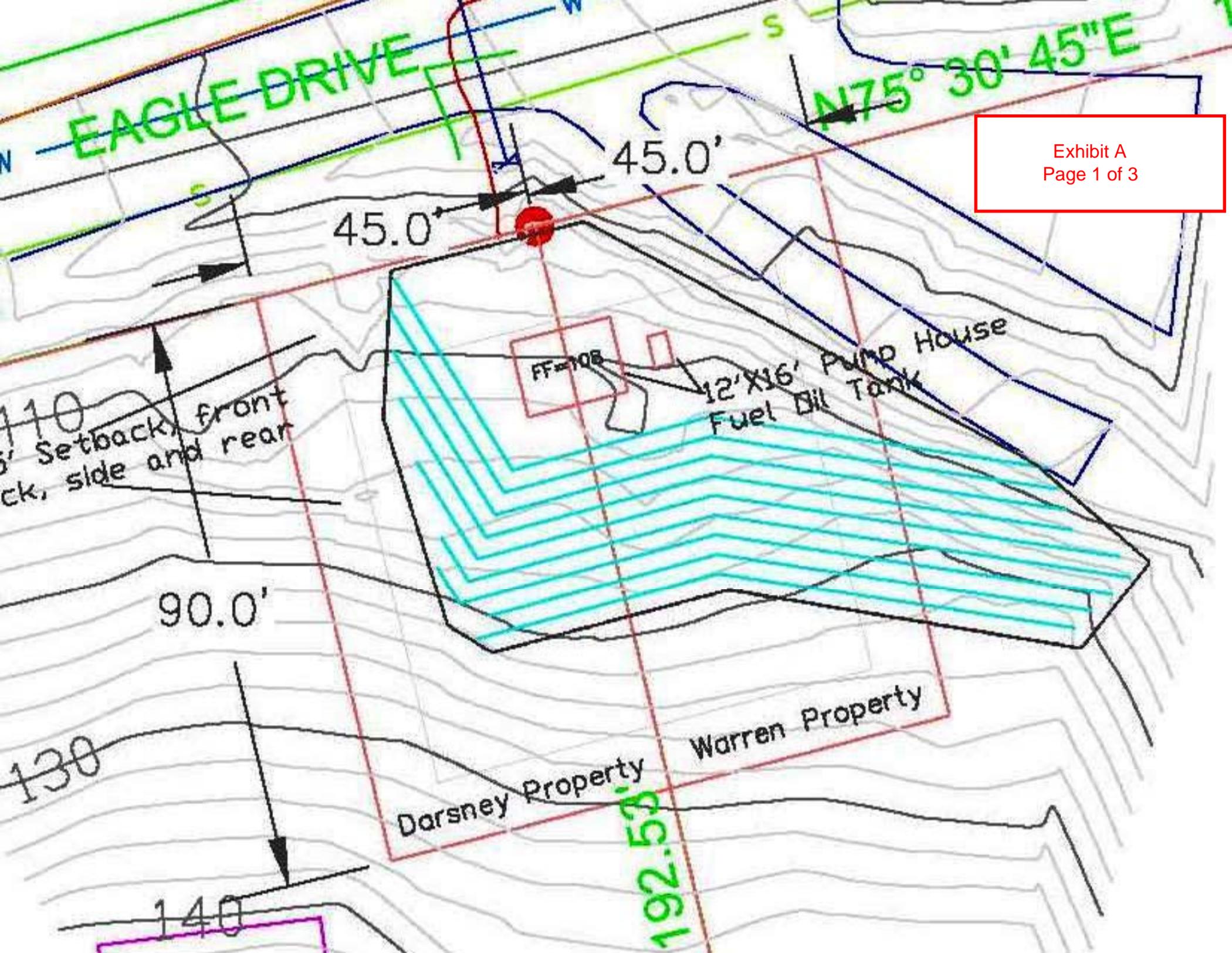


Exhibit A
Page 1 of 3

EAGLE DRIVE

N75° 30' 45" E

45.0'

FF=108

12'x16' Fuel Oil Tank
Pump House

110
Setback, front, side and rear

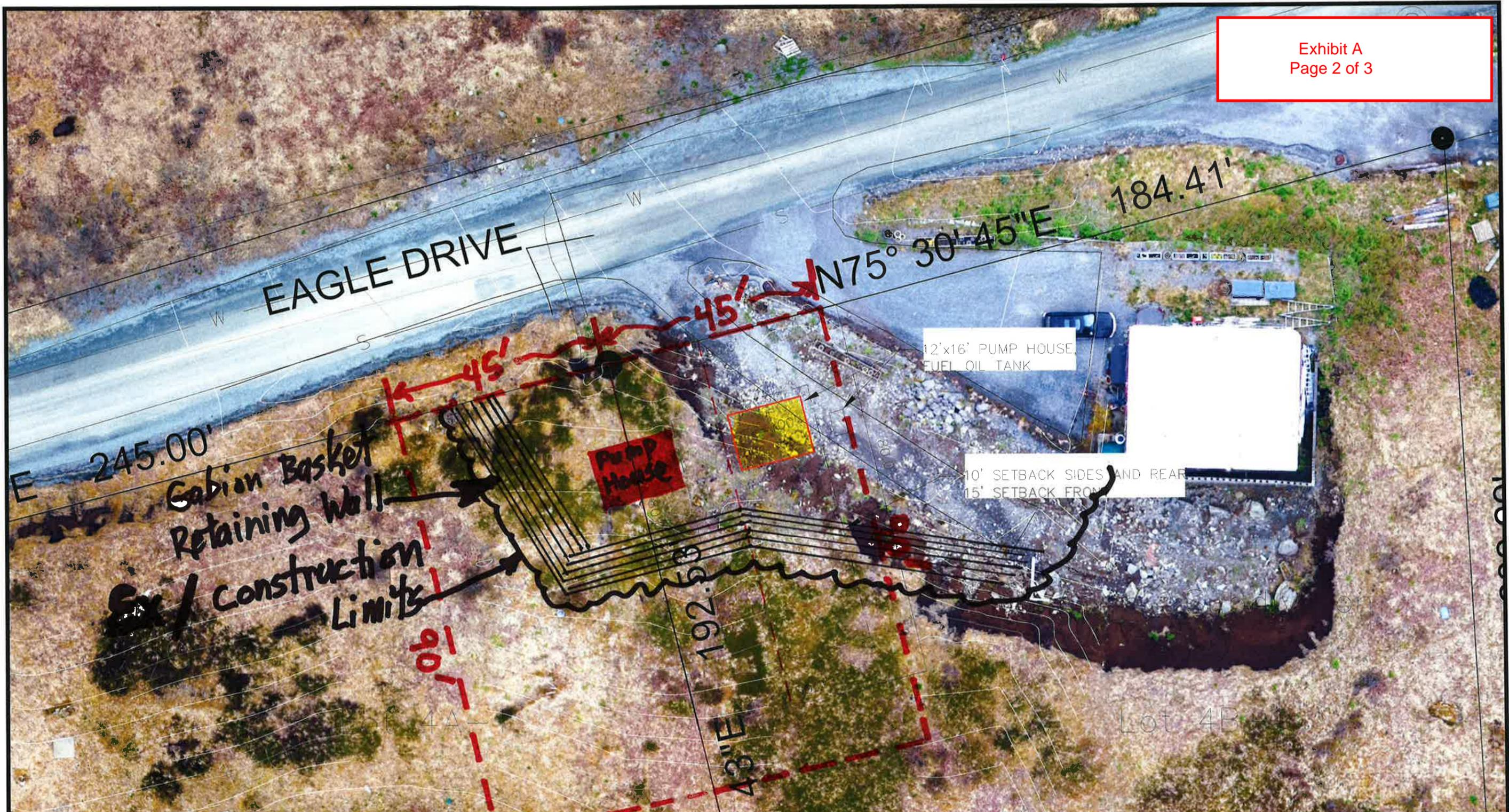
90.0'

130

Darsney Property
Warren Property

192.53'

140



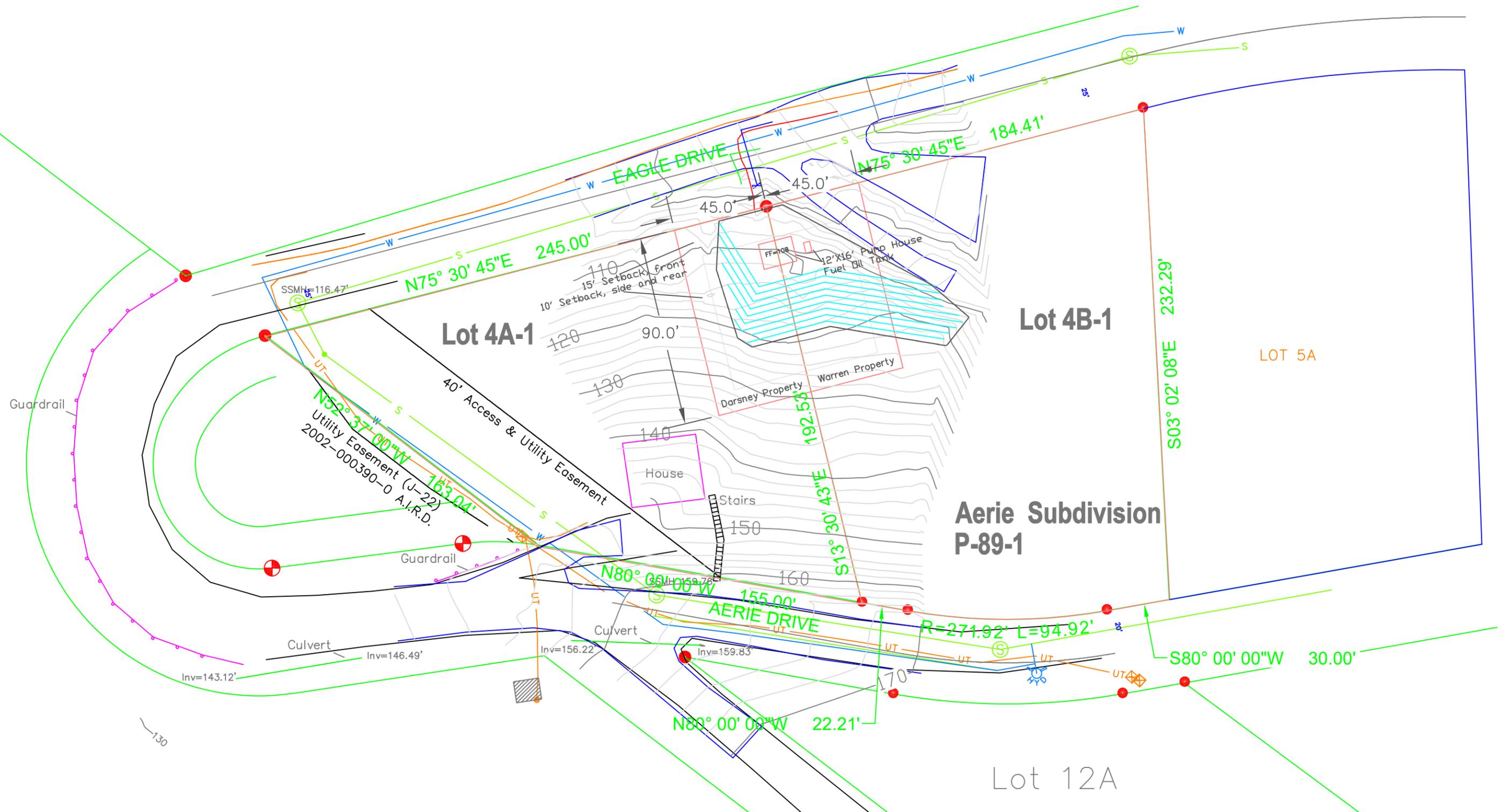
Darsney Property

Warren Property

PRELIMINARY
FOR DISCUSSION
MAR. 1, 2020

REGAN ENGINEERING, P.C.			
PROJECT:	City of Unalaska GENERAL HILL WATER PRESSURE BOOSTER STN		
TITLE:			
DESIGNED BY:	TR	DATE:	03/01/2020
CHECKED BY:	TR	PROJECT NOS:	XXXXX
			SHEET NO: OF

"Exhibit A"



**PURCHASE AND SALE AGREEMENT
FOR A PORTION OF LOT 4B-1**

WHEREAS, the City of Unalaska desires to construct a water pumping station; and

WHEREAS, the City has determined that the best site for the station requires the use of approximately 4,000 square feet of each of Lots 4A-1 and 4B-1, according to Re-Plat No. 89-1;

WHEREAS, Lot 4B-1 consists of 35,478 square feet and an appraisal obtained by the City, dated May 14, 2019, valued the land at \$75,000 if vacant and improved with utilities;

WHEREAS, this valuation represents an average of \$2.11 per square foot;

WHEREAS, the City desires to acquire 4,000 square feet;

WHEREAS, the City has offered, subject to the terms herein, the owners of each lots \$11,000 to acquire the land;

WHEREAS, record owners of Lot 4B-1, Stewart Robert Warren and Theresa A. Warren, desires to accept the City's offer; and

WHEREAS, conveyance of the acquired land must be accomplished by a Re-Plat of Lots 4A-1 and 4B-1, (the "**Re-Plat**");

THEREFORE, the City of Unalaska, as "Buyer", and Stewart Robert Warren and Theresa A. Warren, as, collectively, "Seller", hereby agree as follows, with this Agreement effective ("**Effective Date**") when signed by all parties and approved by the Unalaska City Council.

1. **Real Property to Be Sold to Buyer.**

(a) Seller hereby agrees to sell to Buyer and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, 4,000 square feet Lot 4B-1 (the "**Property**") according to Plat No. 89-1, recorded in the Aleutians Recording District, State of Alaska, with the Property approximately as depicted on Exhibit A, attached hereto, and which shall be more specifically described by the Re-Plat by which Seller shall convey the Property to Buyer.

(b) At Closing Seller shall convey to Buyer all of the Property by the Re-Plat.

2. **Price.** The purchase price shall be \$11,000 ("**Purchase Price**"), to be paid in full at Closing by cashier's check or wire transfer.

3. **Buyer's Right of Entry; As is, Where is.**

(a) Upon the Effective Date, Buyer, its employees, agents, and contractors, shall have the right to enter upon the Property, as well as areas of Lot 4B-1 adjacent to the Property, at all reasonable times and from time to time for the purpose, at Buyer's cost and expense, of inspecting, surveying, making engineering, soil, drainage, and utility evaluations.

(b) Buyer hereby acknowledges and agrees it is fully afforded the opportunity to make such investigations and inspections of the Property and matters related thereto as Buyer and its representatives reasonably desired, and Buyer has entered into this Agreement relying solely upon its own knowledge and investigation of the physical condition of the Property, including without limitation subsurface conditions and environmental matters.

4. **Title Insurance.** Buyer may, at Buyer's sole option and expense, purchase title insurance.

5. **Preparation and approval of Re-Plat.**

(a) Buyer shall be responsible for the duties of a "subdivider", as that term is used in Unalaska Code of Ordinances Chapter 8.08, in connection with preparation of, and approval of, the Re-Plat and any preliminary Re-Plat or other requirements of UCO Chapter 8.08. Provided that Buyer pursues all necessary authorizations and approvals in good faith, any failure to obtain such authorization or approval shall not constitute Buyer's default or breach.

(b) Seller agrees to provide Buyer any authorization or document reasonably necessary for Buyer to satisfy subsection (b) and agrees that Buyer may present this Agreement to the Planning Commission to evidence Seller's support for the Re-Plat and Buyer's authority to pursue municipal authorization thereof.

6. **Representations and Warranties.**

(a) Seller, to the extent of his actual knowledge, hereby represents and warrants to Buyer as follows:

- (i) Seller owns good, marketable, and indefeasible title to the Property and is duly authorized to sell the Property in accordance with the terms of this Agreement, or shall become so on or at Closing;
- (ii) Seller has no knowledge of any violations of laws, regulations, codes, ordinances or requirements affecting the Property;
- (iii) Seller has no knowledge of any actions, suits, claims, assessments or proceedings pending or threatened against or relating to the Property or Seller's ownership thereof;
- (iv) Seller has paid or will pay prior to Closing, through the current year, all taxes, charges debts and other assessments due by Seller with respect to the Property; and
- (v) There will be no recorded or unrecorded liens, security interests, or other encumbrances against any part of the Property which will not be satisfied at or prior to Closing.

(b) Each of the forgoing representations and warranties shall be true and shall remain true at and as of the Closing. If any of Seller's representations or warranties are untrue in any material respect or at any time at or before Closing there is any material change with respect to the matters represented and warranted, then Seller shall give Buyer prompt written notice thereof and Buyer shall have the right to terminate this agreement prior to Closing by delivering to Seller written notice within 30 days of receiving notice from Buyer.

7. Conditions Precedent. The following matters shall be completed prior to or coincident with Closing or waived in writing by the parties (“**Conditions Precedents to Closing**”):

- (a) Buyer’s inspection and testing of the Property does not reveal any condition making the Property unsuitable for Buyer’s purpose;
- (b) Buyer shall prepare the Re-Plat and shall obtain approval of the Re-Plat by the City of Unalaska Planning Commission and satisfy any conditions imposed by the Planning Commission as a condition of approval of the Re-Plat;
- (c) Seller and Buyer have complied with their respective obligations as set forth in Sections 8 and 9;
- (d) The owner of 4A-1 of Re-Plat 89-1 enters into a substantially similar purchase and sale agreement with Buyer and both purchases and sale close simultaneously; and
- (e) Closing is not later than the Closing Date unless extended in writing by both parties.

8. Seller’s Obligations. Provided that (i) all Conditions Precedent to Closing set forth in Section 7 have been satisfied (or will be at Closing), and (ii) Buyer has delivered (or will at Closing deliver) all items required to be delivered, then Seller shall deliver at or before Closing the following:

- (a) The Re-Plat, duly executed by Seller;
- (b) Possession of the Property to Buyer; and
- (c) All other necessary documents to complete the transaction contemplated by this Agreement.

9. Buyer’s Obligations. Provided that (i) all Conditions Precedent to Closing set forth in Section 7 have been satisfied (or will be at Closing), and (ii) Seller has delivered (or will at Closing deliver) all items required to be delivered, then Buyer shall deliver at or before Closing the Purchase Price as set forth in Section 2 as well as those reimbursements identified in Subsection 15(b).

10. Closing.

- (a) Closing shall occur at City Hall or by and through a title company or escrow agent mutually acceptable to Buyer and Seller. Closing shall occur at a mutually agreeable time within 365 days after the Effective Date of this Agreement, or such other date as the parties specify in writing (“**Closing Date**”).
- (b) All funds and documents shall be deemed simultaneously delivered on and as of the Closing Date.

11. Risk of Loss, Casualty, and Condemnation. Until purchase and sale of the Property is consummated at Closing and possession thereof is delivered to Buyer, all of the costs,

expenses, and risks of ownership, maintenance and loss of the Property shall be borne by Seller, excepting therefrom any damages caused by Buyer's entry onto the Property under Section 3(a). If, prior to Closing, the Property or any part thereof is taken pursuant to an exercise of eminent domain, fire or other casualty such that the taking or damage materially affects Buyer's intended use of the Property, Buyer may terminate this Agreement without further liability.

12. Possession. Exclusive possession of the Property shall be delivered by Seller to Buyer at Closing. Upon delivery of possession to Buyer, the Property shall be in the same condition as it is on the date hereof, ordinary wear and tear excepted.

13. Default, Termination & Remedies.

(a) Buyer and Seller shall have the remedy of specific performance.

(b) Notwithstanding anything to the contrary herein, it shall not be a default or breach hereunder if Seller is unable to obtain release of any lien or encumbrance on the Property existing as of the Effective date. In such event, the Agreement shall terminate without further liability of either party.

(c) In the event that the purchase and sale contemplated by this Agreement is not consummated by the failure, without fault of either party to satisfy the conditions precedent set forth herein, the Agreement shall terminate, without further liability of either party.

(d) Notwithstanding anything to the contrary herein, in the event that the purchase and sale contemplated by this Agreement is not consummated as a result failure of Section 7(a) or 7(b) to be satisfied despite Buyer's good-faith efforts, the Agreement shall terminate. Buyer shall reimburse Seller for Seller's direct out-of-pocket costs, without any allowance for Seller's time and efforts, provided that Seller makes written demand, supported by reasonable documentation of such costs, to Buyer within 90 days of the date of termination. Seller shall have no other remedy.

14. Notices. All notices, waivers, elections, approvals, and demands required or permitted to be given hereunder shall be in writing and shall be personally delivered, mailed by certified mail with postage prepaid, or transmitted by facsimile to the location for each party designated herein. Either party may, by proper notice to the other, designate a different address for the giving of notice. Any notice shall be effective when personally delivered, or, if mailed as provided herein, five business days after deposit, postage pre-paid in the U.S. Mails, or in the case of facsimile notice, when sent if answer back or confirmation received:

Buyer:

City of Unalaska
Attn: Planning Director
P.O. Box 610
Unalaska, AK 99685

Seller:

Stewart Robert and Theresa A. Warren
PO Box 920363
Dutch Harbor, AK 99692-0363

15. Costs & Taxes.

(a) Unless specifically made the responsibility of one party elsewhere in the Agreement, all other fees and closing costs in connection with the Closing, except for any costs

incurred by Seller to maintain Seller's representations and warranties, and specifically Subsection 6(a)(v), shall be borne by Buyer.

(b) Provided all real property taxes due and owing prior to the Closing Date for Lot 4A-1 have been paid, in addition to the Purchase Price, Buyer shall, in addition to the Purchase Price, reimburse Seller for any real property taxes as follows:

- (i) 1/20th of the 2019 property taxes for Lot 4B-1, multiplied the be percentage of the 2019 calendar remaining as of the Effective Date of this Agreement, with said amount to be paid to Seller at Closing;
- (ii) 1/20th of the 2020 property taxes for Lot 4B-1, provided that real property taxes are assessed on Lot 4B-1 prior to recording of the Re-Plat and Seller has paid such taxes in full, to be paid within 30 days following Seller's presentation to Buyer of evidence of payment of such taxes.

16. No Broker. Buyer and Seller each mutually represent and warrant to the other that it has not dealt with any broker or real estate agent regarding the Property or this transaction.

17. Survival of Terms and Waiver. The terms and conditions of this Agreement shall survive the Closing and are expressly intended to bind the parties notwithstanding any statute of limitations. The parties each hereby fully and wholly waive the application of the statute of limitations, if any, to any claim brought by the other party for enforcement of, for breach of, or in connection with this Agreement.

18. Merger; Modification.

(a) This Agreement is an integrated document and constitutes the entire Agreement between the parties with respect to the purchase and sale of the Property. This Agreement is intended as the final expression of the parties' intent with respect to any Agreements between the parties relative to the Property. All prior and contemporaneous (whether oral or written) agreements, statements, representations, and understandings between the parties hereto relating to the purchase and sale of the Property is merged herein.

(b) This Agreement may not be modified except in a writing signed by both parties.

(c) An oral statement or representation shall not form the basis for any form of estoppel or waiver, and both parties agree that oral representations or modifications shall not be asserted in any form.

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

20. Relationship of the Parties. This Agreement shall not authorize either party to act as an agent for the other.

21. Law and Venue. This Agreement shall be governed by and construed under the laws of the State of Alaska, without regard to conflicts of laws principles. Venue of any dispute shall be the Superior Court for the State of Alaska in Unalaska, Alaska.

22. Warranties of Authority.

(a) THIS AGREEMENT SHALL NOT BE BINDING UPON BUYER UNTIL THE UNALASKA CITY COUNCIL APPROVES, BY RESOLUTION, THE TERMS AND CONDITIONS OF THE ACQUISITION.

(b) Subject to subsection (a), each party who executes this Agreement acknowledges, warrants, and represents for the benefit of the other party to this Agreement: (i) that such person is duly authorized and empowered to execute this Agreement on behalf of such party; (ii) that such party has been duly formed and organized and is in good standing; (iii) that all necessary and appropriate resolutions and actions by such party's managers or ordinances by such party's governing body authorizing such party to enter into, execute, and perform this Agreement and the transactions contemplated by this Agreement have been obtained; and (iv) that all steps have been taken and acts performed that are conditions precedent to making this Agreement valid, enforceable, and binding against such party in accordance with its terms and conditions.

23. Signatures; Counterparts. This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument. A facsimile or email signature shall be considered an original signature.

The parties have executed this Agreement effective as of the date first written above.

CITY OF UNALASKA

STEWART ROBERT WARREN

Erin Reinders, City Manager Date

Stewart Robert Warren Date

THERESA A. WARREN

Theresa A. Warren Date

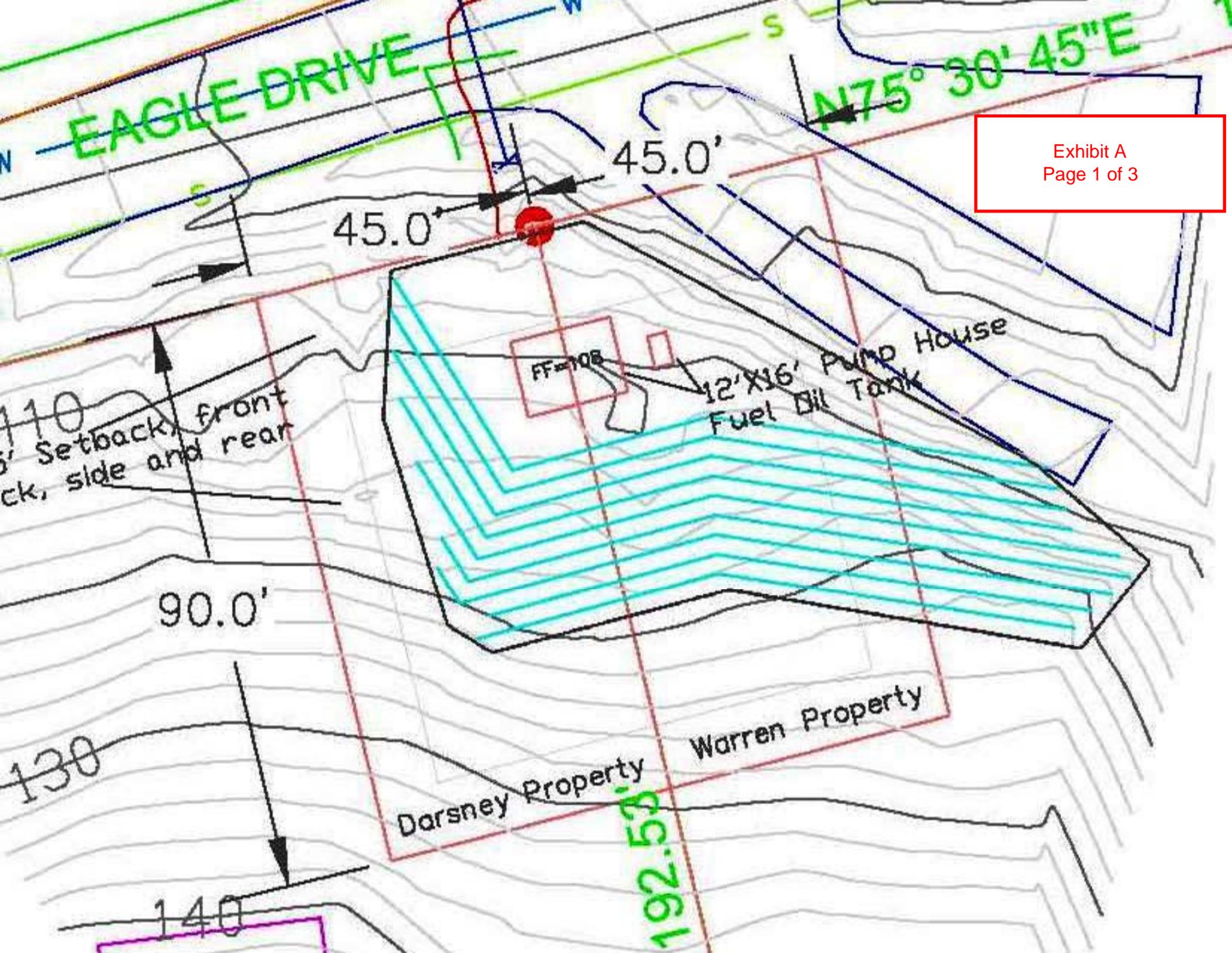


Exhibit A
Page 1 of 3

EAGLE DRIVE

N75° 30' 45" E

45.0'

FF=108

12'x16' FUEL OIL TANK
PUMP HOUSE

110
Setback, front, side and rear

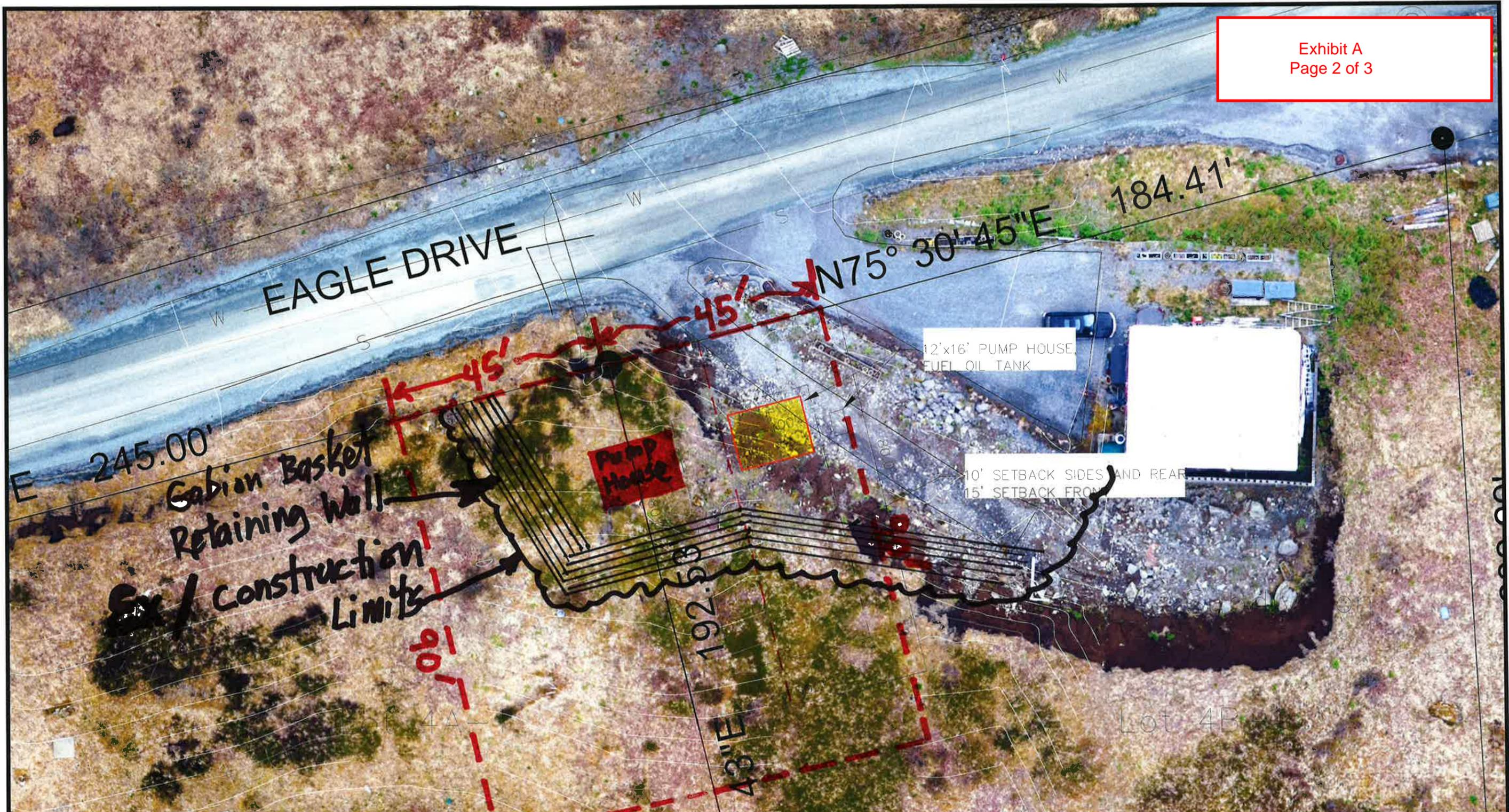
90.0'

130

Darsney Property
Warren Property

192.53'

140



Gabion Basket Retaining Wall
Construction Limits

12'x16' PUMP HOUSE
FUEL OIL TANK

10' SETBACK SIDES AND REAR
15' SETBACK FRONT

Lot 4B

Darsney Property

Warren Property

PRELIMINARY
FOR DISCUSSION
MAR. 1, 2020



REGAN ENGINEERING, P.C.			
PROJECT:	City of Unalaska GENERAL HILL WATER PRESSURE BOOSTER STN		
TITLE:			
DESIGNED BY:	TR	DATE:	03/01/2020
CHECKED BY:	TR	PROJECT NOS:	XXXXX
			SHEET NO:
			OF

"Exhibit A"

