



## Item No. 7 Town of Atherton

### CITY COUNCIL STAFF REPORT – STUDY SESSION

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
GEORGE RODERICKS, CITY MANAGER

**FROM:** ROBERT OVADIA, PUBLIC WORKS DIRECTOR

**DATE:** OCTOBER 7, 2020

**SUBJECT:** BAYFRONT CANAL / ATHERTON CHANNEL FLOOD PROTECTION AND RESTORATION PROJECT MEMORANDUM OF UNDERSTANDING AND ASSOCIATED FUNDING AGREEMENT

### RECOMMENDATION

Discussion and direction on the Town's participation in a Memorandum of Understanding (MOU) among the San Mateo County Flood and Sea Level Rise Resiliency District, City of Redwood City, City of Menlo Park and the County of San Mateo to complete the construction of the Bayfront Canal/Atherton Channel Flood Protection and Restoration Project and lease/leaseback agreement with the County of San Mateo to assist in funding the project.

### BACKGROUND

The Atherton Channel and Bayfront Canal watersheds cross the Town of Woodside, Town of Atherton, City of Menlo Park, City of Redwood City and the County of San Mateo (County). The watersheds have experienced 60 years of repetitive flooding, with 40 significant flood events from 1951 to 2020. During a flood event, areas in Atherton, Redwood City, Menlo Park, and the County are impacted by flooded streets, residences, and businesses, particularly in areas adjacent to the Bayfront Canal and Atherton Channel. These events sometimes inundate local roads with flooding. As recent as the February 7, 2017 storm, the Atherton Channel, which flows into the Bayfront Canal, flooded onto Marsh Road, near the Highway 101 exit.

The City Council, at their September 20, 2017 meeting, approved a Memorandum of Understanding with the City of Redwood City, City of Menlo Park and the County of San Mateo to fund the design, environmental review, permitting and easement acquisition for a proposed Bayfront Canal / Atherton Channel Flood Protection and Restoration Project.

The lead agency for the design phase, including environmental review, permitting, and easement acquisition was the County of San Mateo.

Presently, the San Mateo County Flood and Sea Level Rise Resiliency District, established in January 2020, has taken on the project management responsibilities for the project along with other multi-jurisdictional stormwater projects in the County of San Mateo.

The Memorandum of Understanding for the design phase of the project expired in 2019 and the District has not yet completed easement acquisition and permitting for the project.

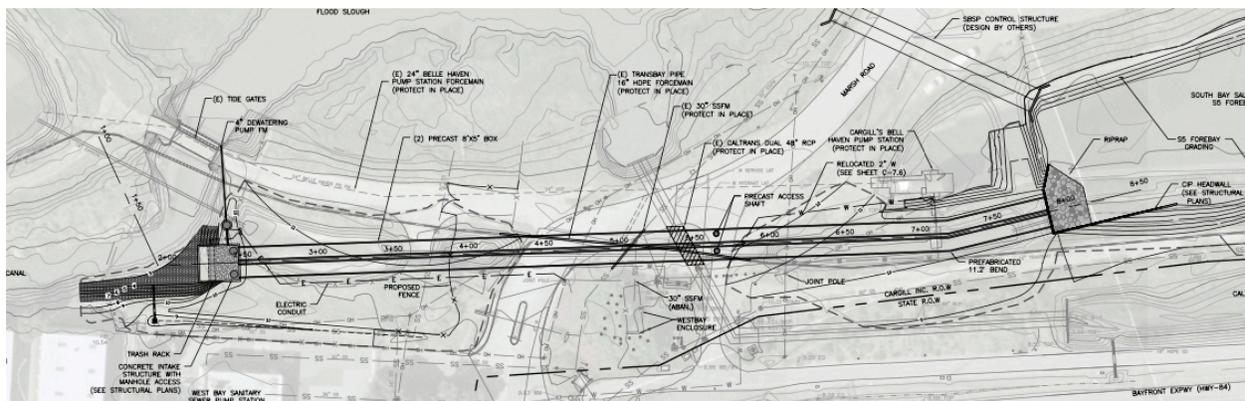
## **ANALYSIS**

The project design is near completion and the project will soon be ready for public bid. A new agreement is needed to complete the preconstruction activities and to facilitate funding of the construction, maintenance and operations, and mitigation monitoring and reporting effort for the project. Project construction is estimated to be commenced in January 2021 and completed not later than December 2021. There are timing issues related to grants and other funding sources that create an urgency to the project moving forward.

### *Project Description*

The project includes the installation of two 540-foot long, 8-foot wide by 5-foot tall underground box culverts, to divert water from the junction of the Bayfront Canal, east of Bayfront Expressway near Flood Slough, under Marsh Road at the entrance to Bedwell Bayfront Park, to South Bay Salt Ponds S5 Forebay during high-tide conditions, when the tide gates restrict flow to Flood Slough.

The project also includes a lateral weir diversion structure on the Bayfront Canal; trash rack and service grate; sump pump with a 4-inch drain line to Flood Slough; access shafts to the box culverts; outlet structure with headwall and riprap drainage connection to the Pond S5 Forebay (Forebay); the recontouring and lowering of a berm adjacent to the Forebay; excavation of the Forebay for increased pond capacity; and require mitigation measures.



Additional Project detail is shown on the attached excerpt from the Project Plans.

### *Project Funding*

The City of Redwood City obtained approximately \$1,135,000 in Proposition 84 Integrated Regional Water Management Grant funds from the Department of Water Resources that will be used towards the construction of the project. The funding requires completion of the project by

December 2021. This is the urgency of timing noted above. Redwood City received an additional \$103,000 for public outreach associated with the project.

Pursuant to the MOU for the design phase, the Town's contribution toward construction is capped at \$1,350,000, \$50,000 of which will be used to fund maintenance and operation efforts as well as mitigation monitoring and reporting for the project for the next five (5) years.

The Town does not currently have the funds available to support the construction, maintenance and operations, and mitigation monitoring effort and a financial agreement is needed if the Town were to participate. The parties to the project are aware of the Town's financing requirement and the County of San Mateo is willing to provide project funding through a lease/leaseback arrangement. Similar to the Certificates of Participation (COP) issued for the Town Center Project, the lease/leaseback would need to be collateralized with Town property. However, via that COP, the Town has encumbered all of its available property assets. Therefore, in order to use the lease/leaseback proposal via the County, the financing must be delayed until December 2021 when the Holbrook-Palmer Park is released from the Town Center COP encumbrance.

The County has proposed the following terms for the lease/leaseback arrangement:

#### Lease/Leaseback Agreement

- Loan amount = \$1,147,500
- Interest Rate = 2%
- Encumbered Property = Holbrook-Palmer Park
- Lease Term – December 1, 2021 to November 30, 2026
- Rental Payment Beginning = December 1, 2021
- Rental Payment End = November 20, 2026
- Maximum Extension Past Lease Term = 5 years
- Reserve Requirement = \$130,000

The County has also proposed that the Town make an initial down-payment on the loan of 15%.

#### *Project MOU*

A City Council Ad-hoc Subcommittee of Mayor DeGolia and Councilmember Widmer was formed to assist staff in review of the proposed MOU related to the Bayfront Canal Project. The major terms of the draft MOU are summarized below. These terms still require approval from the respective governing boards and agencies.

#### Memorandum of Understanding

- Term of the MOU is 5 years or December 31, 2026, whichever is earlier.
- Any uncompleted tasks from the original (design) MOU are incorporated into this agreement.
  - Remaining tasks include environmental compliance, construction permitting, land acquisition, and final design and construction documents.
  - Approximately \$62,215 left in the original MOU would be used towards above activities.

- Atherton's \$1,350,000 contribution is capped, even if more funds necessary for design work, acquisition, etc.
- Any Party may withdraw from the MOU by providing advanced written notice.
  - Parties withdrawing after execution of the MOU will still be responsible for committing the full amount. Any party contemplating not participating should do so by *not* executing the MOU.
  - Only impact on withdrawing after execution of the MOU but prior to construction is limitation of liabilities.
- The City Managers would be delegated the authority to extend the Term, modify due dates, resolve conflicts, or otherwise grant approvals on behalf of their respective agencies, provided that the approvals are not vested in the agency's governing board, and that any approval requiring payment of funds in excess of appropriated shall be approved by the governing board.
- The District will serve as the lead agency for the project, including CEQA, easement acquisition, project construction and construction management, project permitting and mitigation, and project maintenance.
- Staff from each agency participates in coordination meetings for the duration of the project.
- Ownership of the improvements constructed is yet to be determined.
- Redwood City will provide maintenance services for the first 5 years under contract.
- Redwood City represents and warrants that the City of Redwood City has no pending plans or current intent to modify the Mobile Home District Zoning Ordinance Article or rezone those certain properties currently operated as the Redwood Mobile Estates and Harbor Village mobile home parks located between Douglas Court and Haven Avenue.
- The District will be responsible for invoicing all parties for the construction phase, mitigation monitoring and for maintenance activities through the duration of the MOU and shall maintain records for 5 years following completion of the project.
- Atherton's funding share for the MOU is \$1,350,000, inclusive of construction, construction management, mitigation, mitigation monitoring, maintenance and operations, based on a total cost of \$7,455,000. If project costs are reduced, savings will be used towards operation and maintenance of the improvement after year 5.
- In order to ensure that the District has sufficient funds to pay vendors and contractors, each party would be required to pay an amount equal to 15% of their estimated share within 30 days of receipt of such invoice by the District. The District would then invoice each jurisdiction, with the exception of the Town, through the duration of the MOU for costs incurred. Payment of invoices would be required within 30 days of receipt.
- Due to the Town's funding constraints and reliance on the lease/leaseback agreement to fund its portion of the project, the District will withhold invoicing the Town, beyond the initial 15% contribution, until December 2021, when the funds are available through the lease/leaseback agreement from the County.
- Following construction, the parties agree to meet and confer to discuss the extension of the maintenance period and potential future projects but do not commit to further funding or any particular action.
- Different types of indemnity based on various stages and components of the project: (1) District will obtain indemnity/insurance required from contractors protecting all parties in the course and scope of constructing the improvement; (2) mutual indemnity among the parties to the MOU for actions covered by the MOU, but each entity being responsible for their own negligent acts or omissions.

**POLICY FOCUS**

The parties envision that this MOU and improvement project is the first of many future agreements that address regional issues, related to flooding; however, the MOU does not commit any agency to future projects.

**FISCAL IMPACT**

The Town would be responsible for an upfront payment to the District of \$202,500, 15% of its funding commitment in the MOU. The remaining funds, \$1,147,500, would be provided through the Lease/Leaseback agreement with the County of San Mateo, which would be paid back in installments directly from property tax receipts over the 5-year agreement term (roughly \$234,000 per year). This would be in addition to the Town’s existing COP debt service.

**PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service provides (water, power, and sewer), and regional elected officials.

**COMMISSION/COMMITTEE FEEDBACK/REFERRAL**

This item \_\_\_ has or  X  has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month)
- Rail Committee (meets every other month)
- Transportation Committee (meets every other month)
- Tree Committee (meets each month)

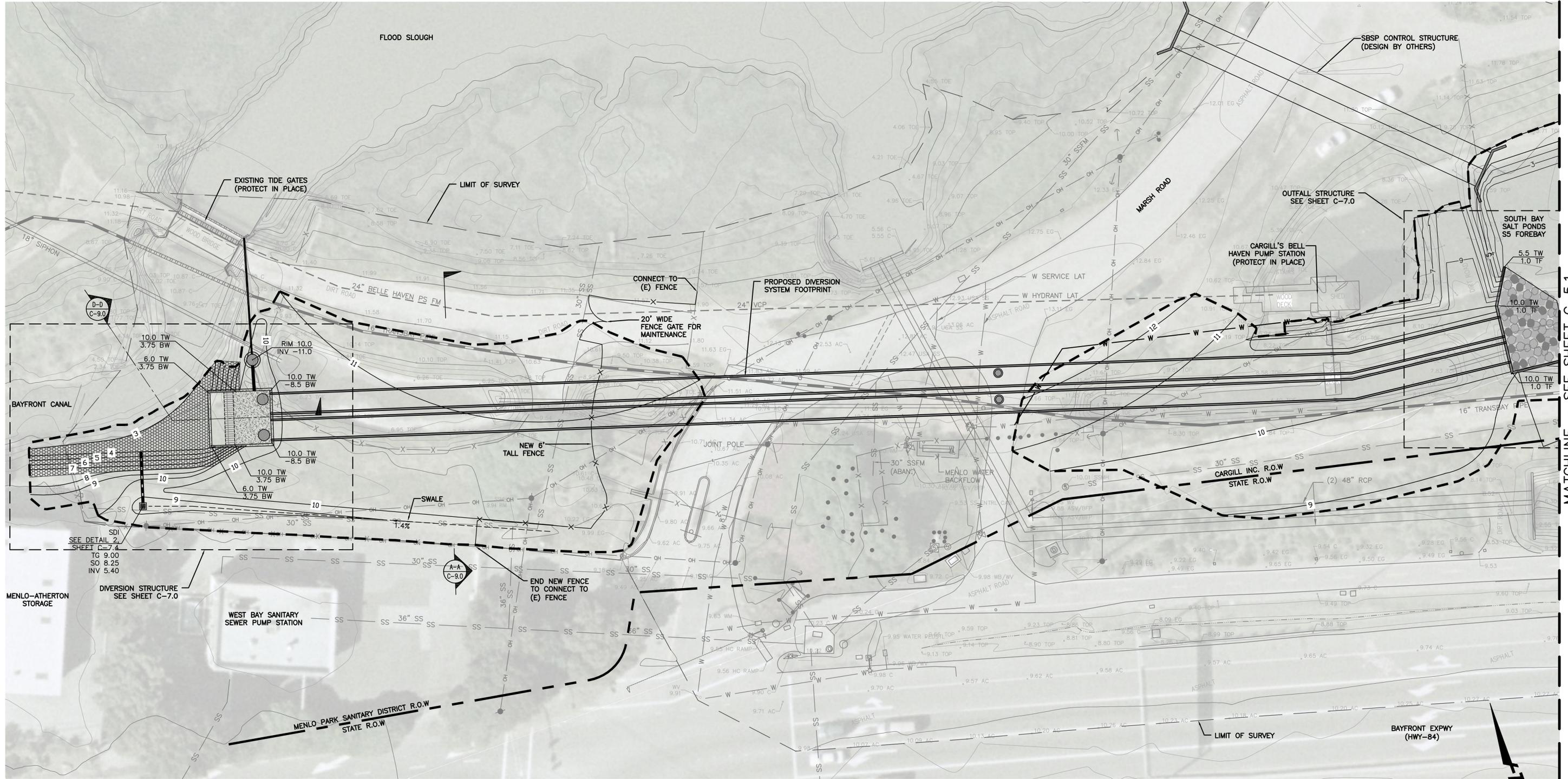
**ATTACHMENT**

Attachment 1 – Project Plan Excerpt

LEGEND:  
 TURF REINFORCEMENT



APPROVED: \_\_\_\_\_  
 DATE: \_\_\_\_\_  
 JAMES C. PORTER, DIRECTOR OF PUBLIC WORKS  
 R. C. E. # 48056 / EXPIRES 12-31-2019



MATCHLINE - SEE SHEET C-5.1

PLAN  
 SCALE: 1"=20'

100% SUBMITTAL

APPROVED DATE:	
SRAVAN PALADUGU, PROJECT MANAGER	
BKF ENGINEERS	
R.C.E. # 74343 / EXPIRES 06-30-2019	

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 255 SHORELINE DRIVE, SUITE 200  
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DESIGNED BY: SP	BAYFRONT CANAL AND ATHERTON CHANNEL FLOOD PROTECTION AND HABITAT RESTORATION		SCALE: AS SHOWN
CHECKED BY: BS	<b>GRADING</b>		DATE: 3/29/2019
DRAWN BY: EM			FILE NO.: 1/4998
JAMES C. PORTER, DIRECTOR OF PUBLIC WORKS SAN MATEO COUNTY		555 COUNTY CENTER, 5th FLOOR REDWOOD CITY, CALIFORNIA 94063	
REVISION	DATE	C-5.0 SHEET 10 OF 30	





APPROVED: \_\_\_\_\_  
 DATE: \_\_\_\_\_  
 JAMES C. PORTER, DIRECTOR OF PUBLIC WORKS  
 R. C. E. # 48056 / EXPIRES 12-31-2019



**PLAN**  
 SCALE: 1"=40'

APPROVED DATE:	
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REVISION	DATE	C-5.1 SHEET 11 OF 30	

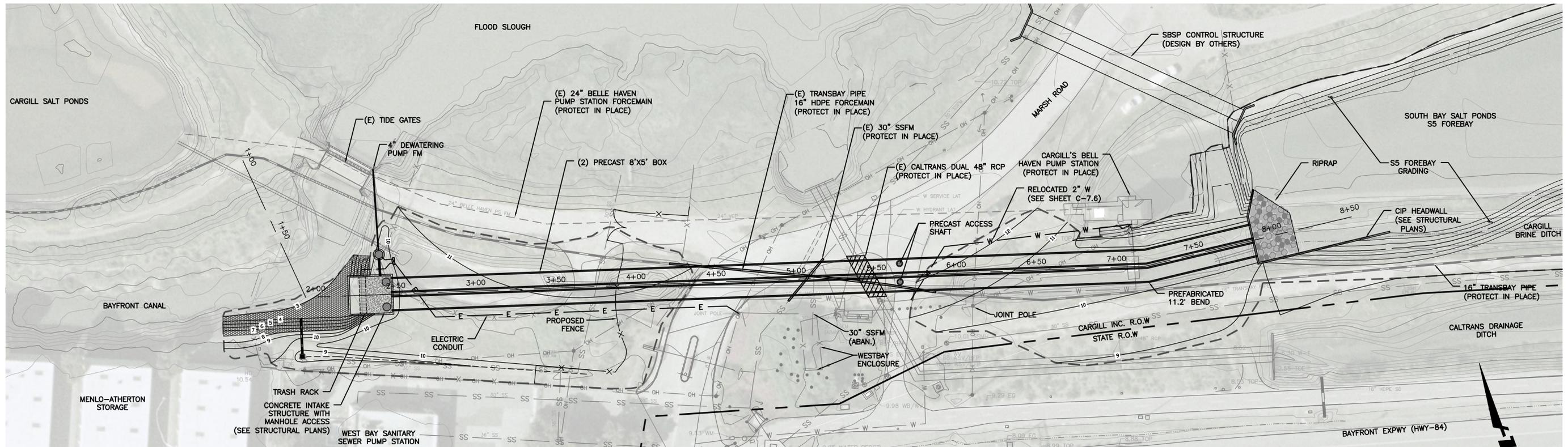


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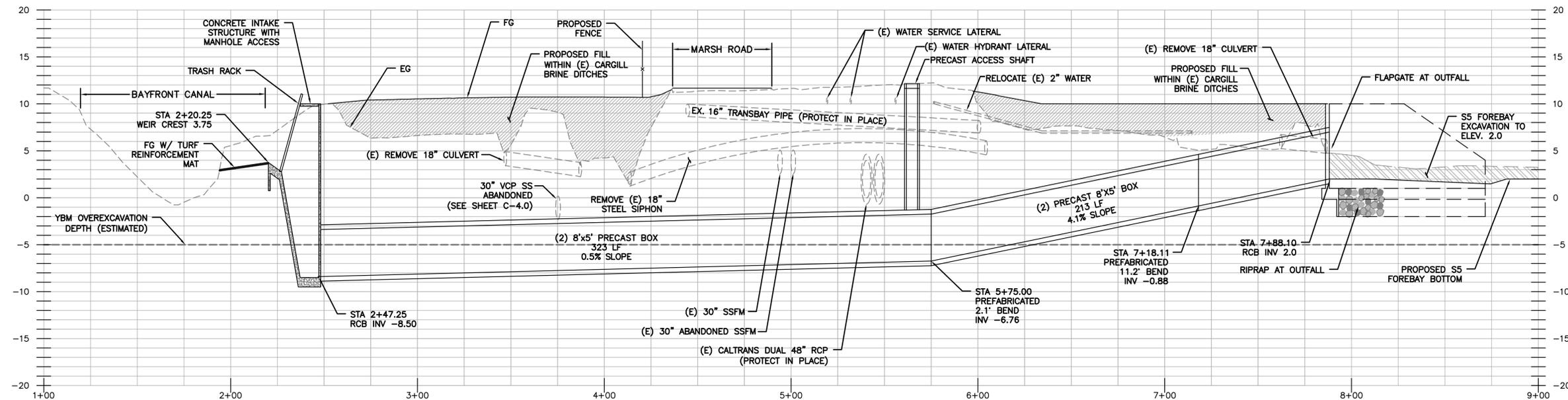
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PLAN  
 SCALE: 1"=30'



PROFILE  
 HOR: 1"=30'  
 VER: 1"=6'

- NOTES
- EXISTING UNDERGROUND UTILITIES AND IMPROVEMENTS ARE SHOWN IN THEIR APPROXIMATE LOCATIONS BASED UPON RECORD INFORMATION AVAILABLE TO THE ENGINEER AT THE TIME OF PREPARATION OF THESE PLANS. LOCATIONS MAY NOT HAVE BEEN VERIFIED IN THE FIELD AND NO GUARANTEE IS MADE AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION SHOWN. THE ELEVATION OF MANY EXISTING UTILITIES, INCLUDING UNDERGROUND GAS, ELECTRIC, TELEPHONE AND WATER ARE UNKNOWN. THE LOCATION OF THESE FACILITIES SHOWN IN PROFILE ON THE DRAWINGS ARE SHOWN WITH AN ASSUMPTION OF 3'+/- OF COVER WHICH MAY OR MAY NOT BE ACCURATE. THE CONTRACTOR SHALL NOTIFY UTILITY COMPANIES AND AGENCIES AT LEAST TWO WORKING DAYS IN ADVANCE OF CONSTRUCTION TO FIELD LOCATE UTILITIES. CONTRACTOR TO CONTACT UNDERGROUND SERVICE ALERT (USA NORTH 811) EITHER ON-LINE AT USANORTH811.COM OR BY PHONE AT (800) 642-2444 OR DIAL 811. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO DETERMINE THE EXISTENCE AND LOCATION OF THOSE UTILITIES SHOWN ON THESE PLANS OR INDICATED IN THE FIELD BY LOCATING SERVICES. ANY ADDITIONAL COSTS INCURRED AS A RESULT OF CONTRACTOR'S FAILURE TO VERIFY LOCATIONS OF EXISTING UTILITIES PRIOR TO BEGINNING OF CONSTRUCTION IN THEIR VICINITY SHALL BE BORNE BY THE CONTRACTOR.
  - EXCAVATIONS SHALL BE ADEQUATELY SHORED, BRACED AND SHEETED SO THAT THE EXCAVATION WALLS WILL NOT SLIDE OR SETTLE AND SO THAT ALL EXISTING IMPROVEMENTS OF ANY KIND WILL BE FULLY PROTECTED FROM DAMAGE. ANY DAMAGE RESULTING FROM A LACK OF ADEQUATE SHORING, BRACING AND SHEETING SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR AND SHALL AFFECT NECESSARY REPAIRS OR RECONSTRUCTION AT CONTRACTORS OWN EXPENSE. WHERE THE EXCAVATION FOR A CONDUIT TRENCH AND/OR STRUCTURE IS FIVE FEET OR MORE IN DEPTH, THE CONTRACTOR SHALL PROVIDE ADEQUATE SHEETING SHORING AND BRACING OR EQUIVALENT METHOD FOR THE PROTECTION OF LIFE OR LIMB WHICH SHALL CONFORM TO THE APPLICABLE CONSTRUCTION SAFETY ORDERS OF THE DIVISION OF INDUSTRIAL SAFETY OF THE STATE OF CALIFORNIA. THE CONTRACTOR SHALL ALWAYS COMPLY WITH OSHA REQUIREMENTS.
  - CONTRACTOR SHALL USE HAND TOOLS WHEN EXCAVATING NEAR EXISTING UTILITIES INCLUDING BUT NOT LIMITED TO WATER, SEWER, STORM, GAS, ELECTRICAL, COMMUNICATION AND CABLE LINES.

APPROVED DATE: \_\_\_\_\_

SRAVAN PALADUGU, PROJECT MANAGER  
 BKF ENGINEERS  
 R.C.E. # 74343 / EXPIRES 06-30-2019

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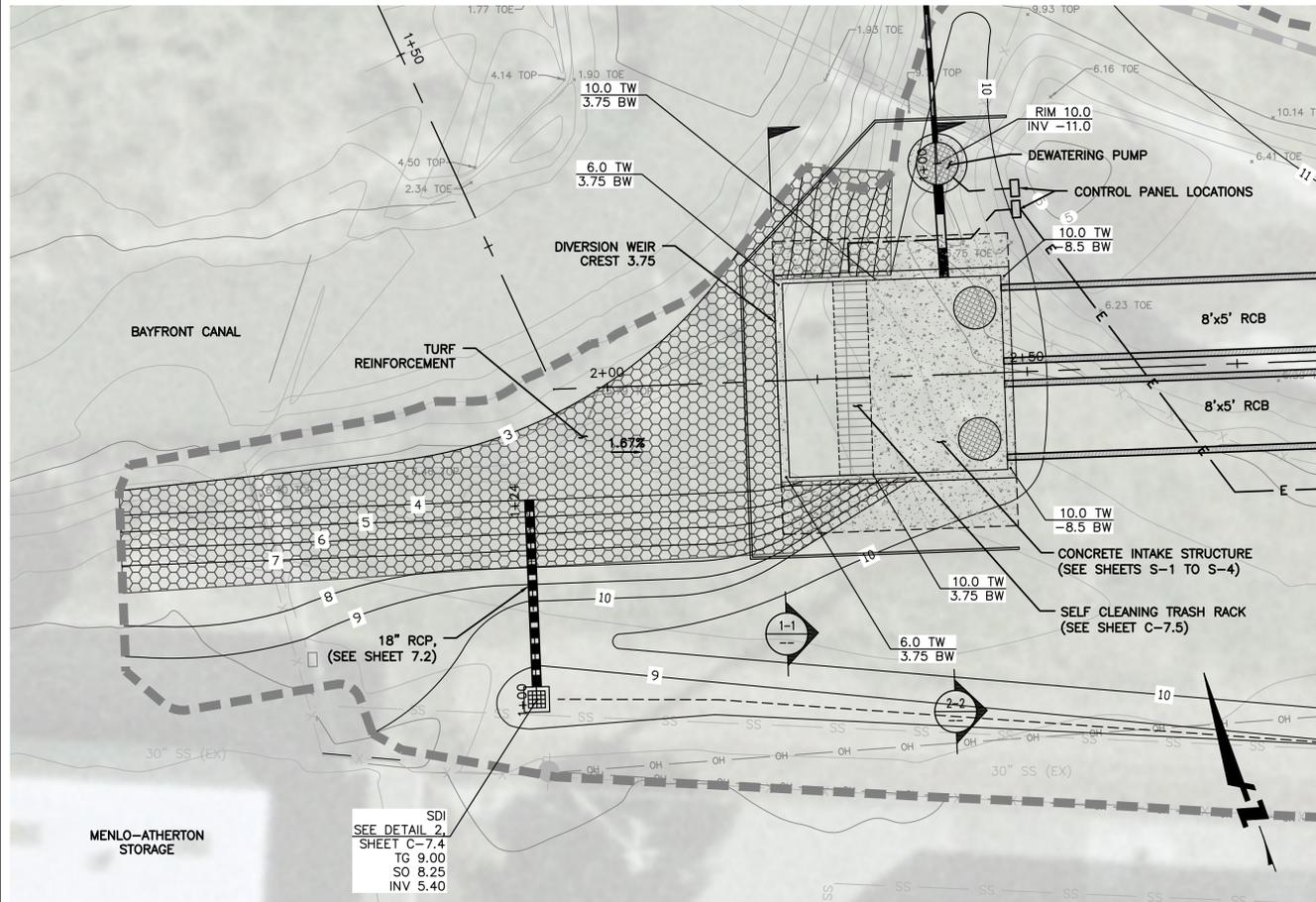


DESIGNED BY: SP	BAYFRONT CANAL AND ATHERTON CHANNEL FLOOD PROTECTION AND HABITAT RESTORATION	SCALE: AS SHOWN
CHECKED BY: BS		DATE: 3/29/2019
DRAWN BY: EM		FILE NO.: 1/4998
JAMES C. PORTER, DIRECTOR OF PUBLIC WORKS SAN MATEO COUNTY		555 COUNTY CENTER, 5th FLOOR REDWOOD CITY, CALIFORNIA 94063
REVISION	DATE	
FOR REDUCED PLANS ORIGINAL SCALE IS IN INCHES		C-6.0 SHEET 12 OF 30

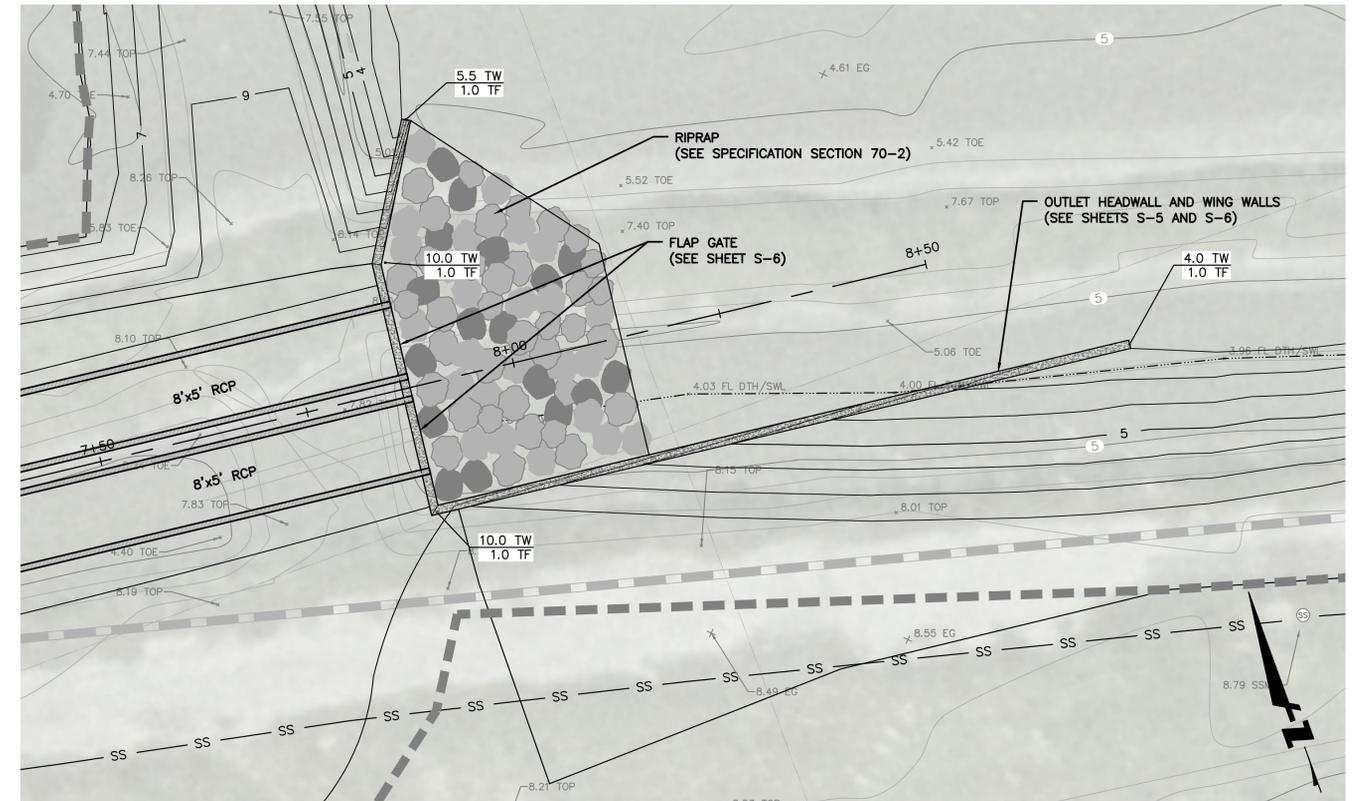
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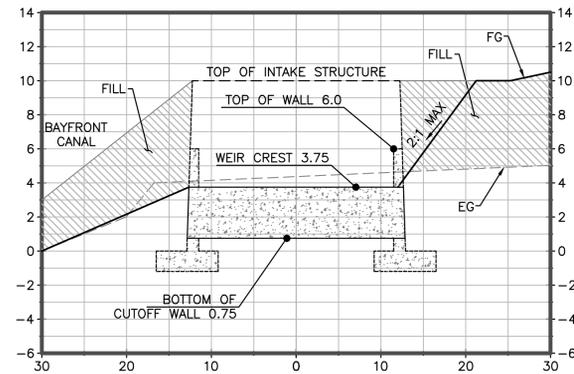
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 JAMES C. PORTER, DIRECTOR OF PUBLIC WORKS  
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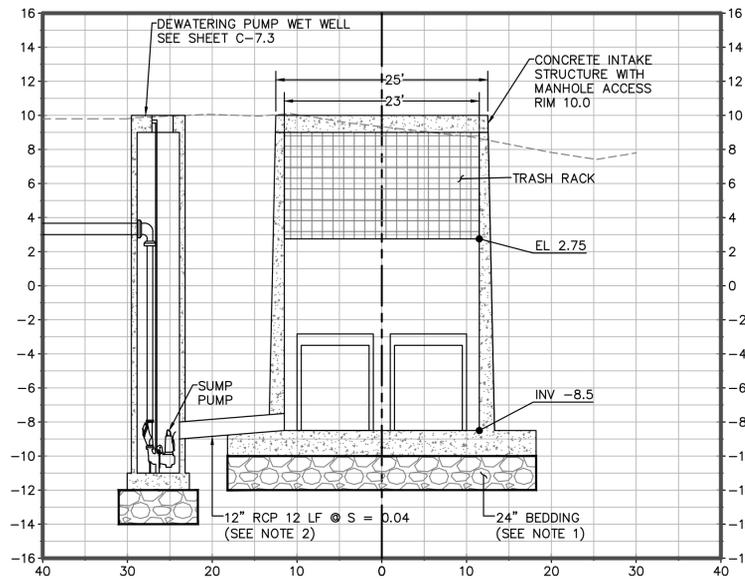
**INTAKE STRUCTURE PLAN**  
 SCALE: 1"=10'



**OUTFALL STRUCTURE PLAN**  
 SCALE: 1"=10'



**SECTION 1-1**  
 SCALE: 1"=10'



**SECTION 2-2**  
 SCALE: 1"=10'

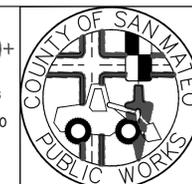
- NOTES:
- BEDDING MATERIAL SHALL BE A MINIMUM OF 24" THICK AND SHALL CONSIST OF 3/4" OR 1 1/2" CRUSHED DRAIN ROCK. BEDDING MATERIAL SHALL BE FULLY WRAPPED WITH MIRAFI 600X GEOTEXTILE OR APPROVED EQUAL W/ 12" MINIMUM OVERLAP AT THE TOP.
  - PIPE ENDS SHALL BE CONNECTED TO THE CONCRETE STRUCTURES USING LINK-SEAL MODULAR SEAL OR APPROVED EQUAL FOR A WATER TIGHT JOINT.

APPROVED DATE: \_\_\_\_\_

SRAVAN PALADUGU, PROJECT MANAGER  
 BKF ENGINEERS  
 R.C.E. # 74343 / EXPIRES 06-30-2019

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CHECKED BY: BS			DATE: 3/29/2019
DRAWN BY: EM	<b>CONSTRUCTION DETAILS</b>		FILE NO.: 1/4998
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REVISION	DATE		
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 04-29-2019  
 DRAWING NAME  
 PLOT TIME

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