SETTLEMENT AGREEMENT BETWEEN
THE CITY OF MONTE SERENO AND SEABORN DEVELOPMENT LLC

This Settlement Agreement ("Agreement") is entered into as of September 1, 2020 ("Effective Date") by and between the City of Monte Sereno, a California municipal corporation ("City"), Seaborn Development LLC, a California limited liability corporation ("Seaborn Development"), and Annette Seaborn ("Seaborn"), an individual (collectively, "Parties").

RECITALS

A. Seaborn Development owns a certain parcel on a 0.96-acre site located at 18081 Saratoga Los Gatos Road, APN No. 410-20-036 (the "Property"), and was applicant and real party in interest regarding an application submitted for a tentative parcel map TM17-01 to subdivide into 4 parcels, three parcels developable with single-family residences, identified as Lots 1, 2 and 3, and one parcel to be improved as a private cul-de-sac, identified as Lot 4 (the "Project").

B. The City Council considered the Project at a public hearing on June 2, 2020, and adopted a resolution on June 16 to deny the Project (the "Denial"). In accordance with Code of Civil Procedure section 1094.6, written notice of the decision was mailed to Seaborn and Seaborn Development on July 13, 2020.

C. Seaborn and Seaborn Development ("Applicant Parties") contend that the Denial was unlawful, and among other things, in violation of the Housing Accountability Act as set forth in Government Code section 65589.5, and that the Applicant Parties are therefore entitled by law to a re-hearing of the Project before the City Council, contentions which the City denies.

D. The Parties wish to provide for a resolution of the contentions of Seaborn and Seaborn Development without result to litigation.

SETTLEMENT AGREEMENT TERMS

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

1. **Project:** The Project is hereby deemed re-submitted and filed with the clerk pursuant to Government Code section 66452.1.

2. **City Action on Project:** The City Council shall, within 60 days of the Effective Date, take final action on the Project. "Final Action" means adoption of a resolution evidencing a final decision by the City Council made in accordance with all applicable procedural requirements of the Subdivision Map Act and the Monte Sereno Municipal Code, either approving the Project or denying it. It is agreed and understood between the Parties that the Applicant Parties voluntarily agree to submit the Project to the Site and Architecture Committee for its recommendation provided such consideration shall not delay Final Action within 60 days of the Effective Date, as
set forth in this Section, and that any participation by the Applicant Parties in any hearing before
the Site and Architecture Committee shall be deemed strictly voluntary.

3. **Application and Processing Fees:** As part of the consideration for this Agreement, the
City shall deem all application fees and processing fees required for consideration of a tentative
parcel map for the Project satisfied, and anticipates that no new studies shall be required in
connection with the Project, including further review under the California Environmental Quality
Act due to the City Council’s review and approval of the Initial Study, Mitigated Negative
Declaration, and Mitigation Monitoring and Reporting Program for the Project, unless
reasonably necessary as a result of changes to the Project or new information not available
during prior study. Notwithstanding the foregoing, this shall not relieve Applicant Parties, or
any successors-in-interest, from payment of any applicable fees for other permits that may be
required for development of the Property, such as building permit, grading permit, or site
development permits. Except as expressly provided herein, any such permits shall be subject to
the applicable laws and regulations in effect at the time of the processing of those applications.

4. **Dismissal of Claims:**

4.1. **Approval of the Project:** If the City Council grants the approval of the Project,
pursuant to Section 2 above, subject only to the conditions of approval attached hereto as
Exhibit A (the “Approval”), the mutual release and waiver of claims set forth in Section 6 shall
be deemed to apply, and, as additional consideration for this Agreement and the Approval, prior
to the approval of the final map Applicant Parties will execute (and, after approval of final map,
Applicant Parties shall record), a joint maintenance agreement or similar instrument approved as
to form by the City Attorney providing for the maintenance of Lot 4, landscaping screening all
parcels from view from Highway 9 on Lot 1, and drainage facilities including bioswales located
on the Project by the owners of Lots 1 through 3.

4.2. **Denial or Failure to Approve the Project:** This Agreement shall terminate if
the City Council takes Final Action denying the Project or if the City Council otherwise fails to
grant the Approval within the 60 day period set forth in Section 2. If the Agreement is
terminated under this Section 4.2, all Parties reserve their respective claims, defenses, remedies
and rights with respect to the Denial and otherwise, including the right to commence a court
action challenging the City Council’s actions regarding the Denial.

5. **Tolling.** It is agreed and understood between the Parties that pursuant to Emergency
Rule 9 of those certain California Emergency Rules of Court Relating to COVID-19, adopted
effective April 6, 2020, and amended effective June 20, 2020, any and all statutes of limitations
relating to the subject matter of this Agreement began to run on August 3, 2020. Such statutes of
limitations shall be deemed tolled from August 3, 2020, until the date of the termination of this
agreement as set forth in Section 4.2, above.

6. **Mutual Release:** Upon Final Action granting the Approval, the Parties agree as follows:

6.1 Each party hereto, and its respective employees, representatives, agents,
related entities, officers, directors, shareholders, members, partners, predecessors, insurers, attorneys, administrators, successors and assigns, does hereby fully and forever completely release, acquit and discharge the other party and its respective employees, representatives, agents, related entities, officers, directors, shareholders, members, partners, predecessors, insurers, attorneys, administrators, successors and assigns, from any and all damages, claims, actions, disputes, demands, losses, liens, written contracts, costs, expressed and/or implied warranty obligations, attorneys' fees, costs, actions, causes of action, and liabilities of whatever kind and nature (hereafter, "Claims") arising from or related to, the Denial and any action of the City on the Project predating the Effective Date.

6.2. Applicant Parties covenant not to sue the City, its elected City Council, officers, employees, consultants, agents, and volunteers, with respect to any Claims released under this Section 6.

7. **City Discretion:** Nothing in this Agreement shall be deemed to constrain or otherwise limit the discretion of the City Council with respect to the Project; provided, however, that it is agreed and understood that granting the Approval is a condition precedent to Applicant Parties’ release of Claims pursuant to Section 6, above.

8. **Scope of Agreement:** This Agreement only applies to the Denial of the Project. The Parties anticipate that Applicant Parties or a successor in interest may seek future approvals of other projects in the City ("Future Approvals"). The Parties acknowledge that any such Future Approvals shall be subject to the City's then-existing, lawful ordinances, permits, codes and/or regulations, as well as then-existing state and federal law.

9. **Costs:** The Parties agree to bear their own fees and costs in consideration of the settlement entered by this Agreement.

10. **Entire Agreement:** The Agreement constitutes the full and entire agreement among the Parties with respect to the subject matter hereof, superseding all prior agreements, negotiations and discussions among the Parties related to the Denial of the Project, and the Parties acknowledge that there is no other agreement, oral or written, regarding the subject matter of the Agreement. The Agreement may not be modified, except by a written instrument executed by each of the Parties. Such modifications may be presented through the Parties' respective counsel-of-record.

11. **Final Agreement:** The Parties acknowledge that: (a) the Agreement and its reduction to final form is the result of good faith negotiations among the Parties through their respective counsel; (b) the Parties' counsel have reviewed and examined the Agreement before execution; and (c) the Parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each party to this Agreement waives the effect of such statute.
12. **No Admission:** This Agreement is the result of a compromise and shall never, at any time for any purpose, be considered as an admission of liability or responsibility on the part of any party herein released, nor shall the release of any claims or waiver of costs in consideration of the execution of the Agreement constitute or be construed as an admission of any liability whatsoever by any party herein released, who denies such liability and disclaims such responsibility.

13. **Notices:** Any notice which shall or may be given pursuant to this Agreement shall be in writing and personally served or transmitted through first class United States mail, or by private delivery systems, postage prepaid, to the following address or such other address of which a party may give written notice:

   City:
   Steve Leonardis
   City Manager
   City of Monte Sereno
   18041 Saratoga-Los Gatos Road
   Monte Sereno, CA 95030
   steve@cityofmontesereno.org

   With a copy to:
   Sergio Rudin
   City Attorney
   Burke Williams & Sorenson LLP
   1901 Harrison Street, Suite 900
   Oakland, CA 94612-3501
   srudin@bwslaw.com

   Applicant Parties:
   Annette Seaborn
   410 N. Santa Cruz Ave.
   Los Gatos, CA 95030

   With copy to:
   Erik Ramakrishnan
   Berliner Cohen LLP
   10 Almaden Boulevard, 11th Floor
   San Jose, CA 95113
   erik.ramakrishnan@berliner.com

Any notice required or provided for under this Agreement shall be deemed served at the time of personal service. Mailed notices will be deemed served as of the day of receipt.
14. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, assigns and transferees.

15. **Severability:** If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the court is authorized and instructed to modify this Agreement to effectuate the original intent of the parties.

16. **Governing Law.** This Agreement shall be interpreted and enforced according to, and the parties rights and obligations governed by, the domestic law of the State of California, without regard to its laws regarding choice of applicable law. Venue for any proceeding or action to enforce this Agreement shall be brought in the state or federal courts sitting in Santa Clara County, California.

17. **Execution in Counterparts:** This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

CITY OF MONTE SERENO,
A municipal corporation

SEABORN DEVELOPMENT LLC,
A California Limited Liability Company

City Manager
Date

Manager
Date

ATTEST:

Gloisy Gonzalez-Langarica, Deputy City Clerk

ANNETTE SEABORN,
An individual person

Date

APPROVED AS TO FORM:

City Attorney

APPROVED AS TO FORM:

Attorney for Seaborn Development LLC and Annette Seaborn
EXHIBIT A

CONDITIONS OF APPROVAL

1. Unless otherwise stated, all necessary easements shall be dedicated, and all improvements shall be designed and installed, at no cost to the City of Monte Sereno.

2. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements. Grading shall comply with the overall grading plan as designated in sheet T-2 of the tentative map. Landscaping shall comply with the landscaping plan as designated in sheet L-1 of the tentative map.

3. A Registered Civil Engineer shall prepare all Civil Engineering improvement plans.

4. It is applicant’s responsibility to get all necessary permits or approvals from all affected agencies or private parties, including, but not limited to, Caltrans, San Jose Water Co., West Valley Sanitation District, and PG&E. A copy of these permits or approval shall be required as part of the building permit application submittal.

5. Prior to or concurrent with Final Parcel Map recordation, developer shall dedicate necessary easements needed to accommodate the project development. The private street shall be designated as a Public Service Easement (PSE), Public Access Easement (PAE), Water Line Easement (WLE), and Emergency Vehicle Access Easement (EVAE).

6. Prior to recordation, a proposed Final Parcel Map shall be submitted for review by the City. The Final Parcel Map shall be presented to the City Council for review and action.

7. Prior to the recordation of the Final Parcel Map, all documents that need to be recorded with the final map shall be approved by the City Engineer and any unpaid invoices or other outstanding charges accrued to the City for the processing of the subdivision application shall be paid.

8. The developer shall obtain all necessary design approvals, including as may be required by Caltrans, bond for all necessary public improvements along Saratoga-Los Gatos Road, including but not limited to the following:

   a. Install and/or repair, as necessary, new curb, gutter, walkway, and Accessibility Ramps along entire project frontage on Saratoga Los Gatos Road.

   b. Install the catch basin and 24” storm drain main line crossing Saratoga-Los Gatos Road or alternative drainage design approved by the City Engineer and other affected agencies.

   c. Install storm drain outfall to the drainage ditch along the Saratoga-Los Gatos Road or alternative drainage design approved by the City Engineer and other affected agencies.
d. Install new landscaping along the project frontage.

9. Plans for all public and private improvements shall be prepared on Mylar (22”x34” sheets) and developer shall submit a digital format of the Record Drawings upon completion of improvements. All improvements must be in accordance with the City of Monte Sereno’s Public Works Standard Details and built to the City Engineer’s satisfaction and accepted by the City prior to issuance of any first certificate of occupancy for the project.

Monuments shall be set per section 13.02.020 of the Monte Sereno Municipal Code including but not limited to setting permanent pipe monuments at all boundary corners, in all street intersections, and at the beginning and ending of curves.

10. Prior to issuance of the first permit to develop the property (i.e. grading, building), developer shall execute a subdivision improvement agreement in a form acceptable to the City and post bonds with the City that shall secure the construction of the public and private improvements required by these Conditions. Insurance in a policy form and amount acceptable to the City shall be provided in accordance with the terms of the agreement.

11. All public improvements, including but not limited to, curb, gutter, sidewalk, street light and landscaping along project frontage on Saratoga Los Gatos Road shall be designed and installed, at no cost to the City of Monte Sereno, and the future maintenance of these improvements shall be the shared responsibility of the property owners in the subdivision and reflected in any maintenance agreements for the subdivision.

12. TREES - Any significant trees to be removed, as defined per Section 10.15.015, shall be subject to a Tree Removal Permit prior to issuance of any grading permit and/or site development permit.

13. WATER QUALITY - Prior to issuance of any grading or building permits, a detailed drainage plan shall be approved by the City Engineer. Plans shall:

   a. Comply with the National Pollution Discharge Elimination System (NPDES) permit requirements, Santa Clara Valley Water District requirements, and the City of Monte Sereno Municipal Code regarding stormwater pollution prevention. Specifically, the project must include source control, site design and treatment measures to achieve compliance with Provision C.3. of the NPDES Permit. Measures may include, but are not limited to, minimization of impervious surface area, vegetated swales, infiltration areas, and treatment devises.

   b. Include erosion control measures to prevent soil, dirt, debris and contaminated materials from entering the storm drain system, in accordance with the regulations outlined in the ABAG Erosion and Sediment Control Handbook.

14. WATER QUALITY – Prior to any grading activity:
   a. The applicant’s designer or engineer shall submit the required certification indicating that sizing, selection, and design of treatment BMP’s for the project site has been completed to meet the requirements of the City of Monte Sereno’s NPDES permit, Provision C.3.
b. A Stormwater Treatment Measures Maintenance Agreement and Stormwater Management Plan shall be submitted to the City Engineer for review and approval. Once approved, the Maintenance Agreement shall be recorded with the Santa Clara County Recorder's Office to ensure that the maintenance is bound to the property in perpetuity. The applicant shall provide the City with proof of recordation.

15. WATER QUALITY - Prior to issuance of any grading or building permits the applicant shall comply with the NPDES General Construction Permit requirements including paying fees, filing a Notice of Intent and providing a Stormwater Pollution Prevention Plan (SWPPP). The applicant shall provide the City with a copy of the filed Notice of Intent and SWPPP. This applies to all projects which disturb a land area of one acre or more. Disturbance, includes grading, filling, grubbing, clearing, vegetation removal, building, demolition etc.

16. SEWER - The on-site sewer system laterals and lines shall be privately owned and maintained by the property owners in the subdivision and reflected in the maintenance agreement for the subdivision.

17. WATER - Water service shall be provided from San Jose Water Company and the applicant or successor shall be responsible for all related SJWC fees and compliance with any SJWC requirements.

18. UTILITIES - All service to the development shall be an "underground service" designed and installed in accordance with the Pacific Gas and Electric Company, Frontier (phone) Company and local cable company regulations. Transformers and switch gear cabinets shall be placed underground unless otherwise approved by the Planning Director and the City Engineer. Underground utility plans must be submitted for City approval prior to installation.

19. UTILITIES - All proposed surface-mounted hardware (fire hydrants, electroliers, etc.) along the street frontages shall be located outside of the sidewalk within the proposed Public Utility Easement in accordance with the requirements of the City Engineer or, where applicable, the Fire Chief.

20. UTILITIES - All utilities shall be designed in accordance with the requirements of the City of Monte Sereno and applicable public agency standards.

21. All private and public improvements, including the complete installation of all improvements relative to streets, sanitary sewer, storm drainage, water system, underground utilities, etc., shall be completed and attested to by the City Engineer before approval of occupancy of any unit. Where facilities of other agencies are involved, such installation shall be verified as having been completed and accepted by those agencies.

22. Prior to or concurrent with final map recordation, all maintenance agreements involving private infrastructure and improvements shall be reviewed and approved by the Planning Director, City Engineer, and City Attorney. The agreement(s) shall describe how the landscaping, private road, bioswales and drainage improvements, sewer improvements, and other utilities shall be maintained by the homeowners and reference the Stormwater Treatment Measures Maintenance
Agreement. Such maintenance agreements shall be recorded as permanent obligations of the owners, and shall not allow amendment or termination without the City’s approval. The agreements shall include provisions so that structures are not constructed in conflict with the bioswales and drainage improvements required under the tentative map and shall include a right of enforcement for the City with respect to any nuisance conditions arising out of violations related to the same.

Environmental Conditions

Air Quality:

AQ-1. Future development of the site shall include applicable control measures from the Air District’s current air quality plan. These control measures include, but are not limited to, the following:
Provision of internal bicycle facilities with connection to State Route 9;
Incorporation of solar hot water or solar electricity in the homes;
Incorporation of “cool roofing” and “cool paving” technologies into the development; and
Inclusion of shade trees in landscaping plans.

AQ-2. The following basic construction mitigation measures shall be incorporated into project construction documents:
All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day;
All haul trucks transporting soil, sand, debris, or other loose material off- site shall be covered;
All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited;
All vehicle speeds on unpaved surfaces shall be limited to 15 mph;
All driveways and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used;
Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points;
All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation; and

Post a publicly visible sign with telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.

Biological Resources:

BIO-1. To avoid impacts to nesting birds, the removal of trees and shrubs shall be minimized to the greatest extent feasible. Construction activities that include any tree removal, pruning, grading, grubbing, or demolition shall be conducted outside of the bird nesting season (February through August). If this type of construction occurs during the bird nesting season, then a
qualified biologist shall conduct a preconstruction survey for nesting birds to ensure that no nests would be disturbed during project construction. This survey shall be conducted no more than seven (7) days prior to the initiation of disturbance activities during the early part of the nesting season (February through April) and no more than 30 days prior to the initiation of disturbance activities during the late part of the nesting season (May through August). If no active nests are present within 250 feet of construction, then activities can proceed as scheduled. However, if an active nest is detected during the survey within 250 feet of construction, then the establishment of a protective construction-free buffer zone from each active nest (typically 250 feet for raptors and 50-100 feet for other species) will be clearly delineated or fenced until the juvenile bird(s) have fledged (left the nest), unless the biologist determines that construction would not impact the active nest. Implementation of this mitigation measure will be the responsibility of project site developers.

BIO-2. To avoid impacting active pallid bat roosts, if present, all vacant buildings proposed for removal that are unoccupied and boarded up at the time of development approval (dark in the daytime) shall be opened in the winter months (prior to mid-March) to allow in light, making these areas non-suitable for use as maternity roosts. In addition, any mature trees removed due to project implementation shall be removed in two stages (with the limbs removed one day, and the main trunk removed on a subsequent day) to allow any potentially present day-roosting bats the opportunity to relocate. Implementation of this mitigation measure will be the responsibility of project site developers.

BIO-3. For each tree removed, the developer shall plant a California native tree species with at least a one-to-one replacement ratio on the project site, unless inconsistent with good forestry practices, and obtain a permit prior to removal of any tree, in compliance with the City of Monte Sereno’s Tree Preservation Ordinance and/or Subdivision Ordinance. A qualified arborist shall recommend the appropriate replacement ratio and also survey any trees to be preserved, including the trunk diameter, canopy spread, species, condition, and location, and recommend specific steps that must be taken during construction to ensure that those trees are not impacted during construction. Implementation of this mitigation measure will be the responsibility of project site developers.

Cultural Resources:

CR-1. Due to the remote possibility that significant buried prehistoric cultural resources might be found during construction activities, the following language shall be included in all construction documents associated with development of the project site:

“If prehistoric archaeological resources are discovered during construction, work shall be halted at a minimum of 200 feet from the find and the area shall be staked off. The city shall notify a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented.”

Implementation of this mitigation measure will be the responsibility of project site developers.

CR-2. In the event of an accidental discovery or recognition of any human remains, the following language shall be included in all construction documents associated with redevelopment of the project site in accordance with CEQA Guidelines section 15064.5(e):
“If human remains are found during construction there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the coroner of Santa Clara County is contacted to determine that no investigation of the cause of death is required. If the coroner determines the remains to be Native American the coroner shall contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descendent (MLD) from the deceased Native American.

The MLD may then make recommendations to the City of Monte Sereno or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and associated grave goods as provided in Public Resources Code Section 5097.98. The City of Monte Sereno or its authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further disturbance if:

a) the Native American Heritage Commission is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being notified by the commission;
b) the descendent identified fails to make a recommendation; or
c) the City of Monte Sereno or its authorized representative rejects the recommendation of the descendent, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.”

Implementation of this mitigation measure will be the responsibility of project site developers.

Geology and Soils:

GEO-1. Prior to issuance of a grading permit, the applicant shall provide evidence that the recommendations in the February 21, 2017 project geotechnical report are included in the project grading and building plans.

GEO-2. Prior to issuance of a grading permit, the developer shall submit an erosion control plan to ensure that erosion is controlled during grading and construction activities and does not result in deposition of soil off site.

Noise:

N-1. Prior to issuance of a grading permit, the following measures shall be included in the grading and construction plans:

Operational and Situational Controls

(1) All work on site should be restricted to 8:00 a.m. to 8:00 p.m. Weekdays, 9:00 a.m. to 8:00 p.m., Saturdays and no work allowed on Sundays and Federal Holidays.

(2) All construction noise control measures currently imposed on the project shall be maintained unless the measures outlined herein are more restrictive.
(3) All exterior stationary equipment shall be kept at least 100 ft. from neighboring residential property line unless acoustically shielded.
(4) No material deliveries are allowed on Sundays or Federal Holidays.
(5) Cranes shall be located at least 100 ft. from any neighboring residential property line with the exception of cranes or lifts necessary to dismantle scaffolding.
(6) Locate stockpiles adjacent to residential neighbors as much as possible to help shield residences from on-site noise generation.
(7) Driveways and other vehicle travel paths shall be graded smooth to minimize vibration and “bangs” from vehicles traveling over rough surfaces.
(8) Music shall not be audible off site.
(9) Place long-term stationary equipment as far away from the residential areas as possible.
(10) Keep mobile equipment (haul trucks, concrete trucks, etc.) off of local streets near residences as much as possible.
(11) Keep vehicle paths graded smooth as rough roads and paths can cause significant noise and vibration from trucks (particularly empty trucks) rolling over rough surfaces. Loud bangs and ground-borne vibration can occur.
(12) Limit the extent of heavy diesel engine equipment work to less than 10 consecutive days when working within 40 feet of the property lines.

**Interior Work**

(1) For interior work, the windows of the interior spaces facing neighboring residences where work is being performed shall be kept closed while work is proceeding.
(2) Noise generating equipment indoors should be located within the building to utilize building elements as noise screens.

**Equipment**

(1) Earth Removal: Use scrapers as much as possible for earth removal, rather than the noisier loaders and hauling trucks.
(2) Backfilling: Use a backhoe for backfilling, as it is less costly and quieter than either dozers or loaders.
(3) Ground Preparation: Use a motor grader rather than a bulldozer for final grading. Wheeled heavy equipment is less noisy than track equipment. Utilize wheeled equipment rather than track equipment whenever possible.
(4) Building Construction: Nail guns should be used where possible as they are less noisy than manual hammering.
(5) Generators and Compressors: Use generators, compressors and pumps that are housed in acoustical enclosures rather than weather enclosures or none at all.
(6) Utilize temporary power service from the utility company in lieu of generators wherever possible.
(7) All stationary equipment shall be rated no higher than 85 dBA @ 25 feet under the equipment’s most noisy condition.
(8) Circular saws, miter/chop saws and radial arm saws shall be used no closer
than 50 feet from any residential property line unless the saw is screened from view by any and all residences using an air-tight screen material of at least 2.0 lbs/square feet surface weight, such as ¾” plywood.

(9) Use electrically powered tools rather than pneumatic tools whenever possible.

(10) Mitigation of the construction phase noise at the site can be accomplished by using quiet or "new technology" equipment.

(11) The greatest potential for noise abatement of current equipment should be the quieting of exhaust noises by use of improved mufflers.

(12) It is recommended that all internal combustion engines used at the project site be equipped with a type of muffler recommended by the vehicle manufacturer.

(13) All equipment should be in good mechanical condition so as to minimize noise created by faulty or poorly maintained engines, drive-trains and other components. Worn, lose or unbalanced parts or components shall be maintained or replaced to minimize noise and vibration.

(14) Utilize wheeled equipment rather than tracked equipment whenever possible.

(15) Diesel vibrating compaction equipment shall not be used within 100 feet of a residential structure.

_Noise Complaint Management_

(1) Designate a noise complaint officer. The officer shall be available at all times during construction hours via both telephone and email. Signs shall be posted at site entries.

(2) Notify, in writing, all residents within 300 feet of the site of construction. The notification shall contain the name, phone number and email address of the noise complaint officer. A flyer may be placed at the doors of the residences.

(3) A log of all complaints shall be maintained. The logs shall contain the name and address of the complainant, the date and time of the complaint, the nature/description of the noise source, a description of the remediation attempt or the reason remediation could not be attempted.