

Item # 170

**Carson City Board of Supervisors
Agenda Report**

Date Submitted: September 16, 2009

Agenda Date Requested: October 1, 2009

Time Requested: 15 minutes

To: Mayor and Supervisors

From: Public Works

Subject Title: Action to adopt a resolution approving of and authorize the Mayor to sign a 3-party Developer Agreement by and between State of Nevada Department of Transportation (DEPARTMENT), North Carson Crossing, LLC (DEVELOPER) and Carson City (CITY) for removal of a portion of existing freeway sound wall along the North Carson Crossing commercial development adjacent to the Home Depot site. (Sharp)

Staff Summary: The Developer would like to remove a portion of the existing freeway sound wall in order to improve visibility to his North Carson Crossing commercial site. The hope is that the increased visibility will result in increased retail sales which will benefit the Developer, as well as the City through increased sales tax revenues. NDOT and the Developer have conducted noise studies, and have concluded that with minor modifications to the existing Home Depot wall, the freeway sound wall can be removed with little or no impact to surrounding residences. With this Agreement, the City agrees to backstop the Developer with regards to perpetual maintenance of the Home Depot sound wall. Should the Developer fail to maintain the wall, the City would perform the maintenance and then seek reimbursement from the Developer. All costs for the proposed freeway wall removal as well as modifications to the Home Depot wall will be borne by the Developer.

Type of Action Requested: (check one)

☐ Resolution

☐ Ordinance

☒ Formal Action/Motion

☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to adopt a resolution approving of and authorize the Mayor to sign a 3-party Developer Agreement by and between State of Nevada Department of Transportation (DEPARTMENT), North Carson Crossing, LLC (DEVELOPER) and Carson City (CITY) for removal of a portion of existing freeway sound wall along the North Carson Crossing commercial development adjacent to the Home Depot site.

Explanation for Recommended Board Action: The Agreement is required by NDOT in order to allow the Developer to remove a portion of existing freeway sound wall.

Applicable Statute, Code, Policy, Rule or Regulation: Interlocal Agreement per NRS Chapter 277.

Fiscal Impact: None

Explanation of Impact: N/A

Funding Source: N/A

Alternatives: Do not approve the Agreement.

Supporting Material: Developer Agreement with Exhibit A, along with the acoustical analysis prepared by RSW Engineering, Inc.

Prepared By: Jeff Sharp, City Engineer

Reviewed By:

(Public Works Director)

Date:

9/22/09

(City Manager)

Date:

9/22/09

(District Attorney)

Date:

9/22/09

(Finance Director)

Date:

9/22/09

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

3) _____

4) _____

5) _____

(Vote Recorded By)

RESOLUTION NO. _____

**A RESOLUTION ADOPTING AND APPROVING AN INTERLOCAL
CONTRACT BETWEEN CARSON CITY, A CONSOLIDATED MUNICIPALITY
AND POLITICAL SUBDIVISION OF THE STATE OF NEVADA, AND THE
STATE OF NEVADA DEPARTMENT OF TRANSPORTATION TO PROVIDE
FOR REMOVAL OF A PORTION OF EXISTING FREEWAY SOUND WALL
ALONG THE NORTH CARSON CROSSING COMMERCIAL DEVELOPMENT
ADJACENT TO THE HOME DEPOT SITE.**

WHEREAS, pursuant to NRS 277.180, any one or more public agencies may enter into interlocal contracts with any one or more other public agencies for the performance of any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, Carson City is a consolidated municipality and political subdivision of the State of Nevada; and

WHEREAS, the Department of Transportation is an agency of the State of Nevada; and

WHEREAS, NRS 277.180 provides that every such contract must be ratified by appropriate official action of the governing body of each party to the contract as a condition precedent to its entry into force; and

WHEREAS, NRS 277.180 also provides that every such contract must set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties; and

WHEREAS, the parties to the Interlocal Contract desire to adopt and approve such contract as required by NRS 277.180. A copy of the contract is attached to this Resolution as Exhibit "A;" and

NOW, THEREFORE, BE IT RESOLVED that the terms and conditions of the 3-Party Developer Agreement for the removal of a portion of existing freeway sound wall along the North Carson Crossing commercial development adjacent to the Home Depot site are approved; and

BE IT FURTHER RESOLVED that the 3-Party Developer Agreement for the removal of a portion of existing freeway sound wall along the North Carson Crossing commercial development adjacent to the Home Depot site shall be spread at large upon the minutes or attached in full thereto as an exhibit, and that a copy of this Resolution shall be sent to the State of Nevada Department of Transportation.

Upon motion by Supervisor _____, seconded by
Supervisor _____, the foregoing Resolution was passed and
adopted this __ day of _____, 2009 by the following vote.

VOTE: AYES:

NAYS:

ABSENT:

ABSTAIN:

Robert L. Crowell, Mayor
Carson City, Nevada

ATTEST

Alan Glover, Clerk
Carson City, Nevada



Technical Report

Environmental Noise and Vibration Control

• Regulatory Support

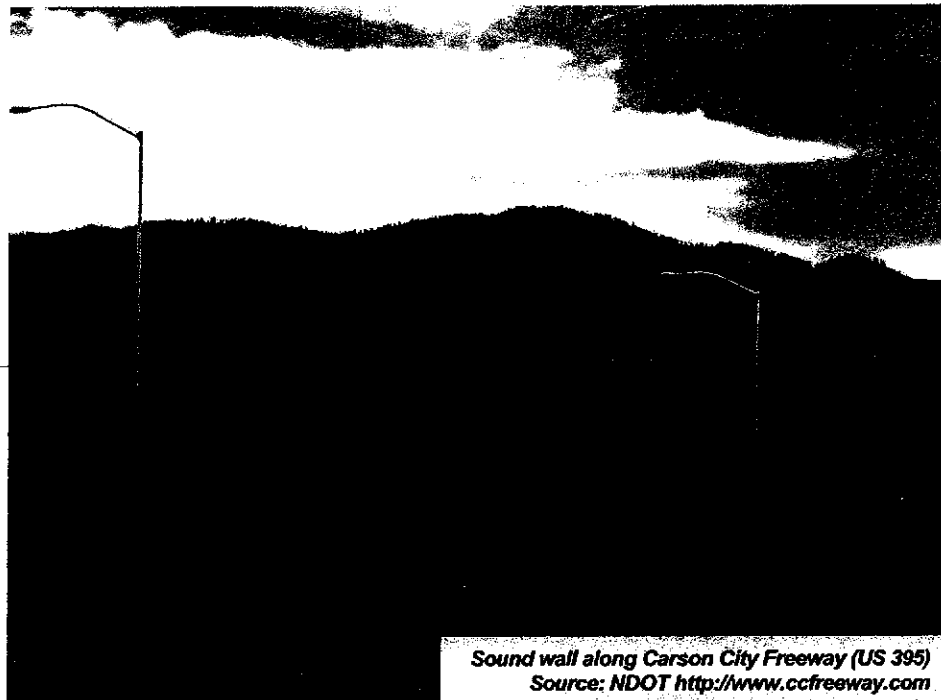
• Public Meeting and Technical Presentations

Date Prepared: May 5, 2008
Prepared for: Kent Witt/North Carson Crossing, LLC
Prepared by: Roger Whitaker, P.E./RSW Engineering, Inc
Subject: North Carson Crossing Shopping Center – Sound Wall Revisions

This report contains the results of the acoustical analysis performed for the proposed reconfiguration of the existing sound wall along southbound US 395 and construction of a new sound wall along the south perimeter of the new North Carson Crossing shopping center. This report addresses concerns expressed by the City of Carson and local residents about the proposed revisions. Another analysis was also recently prepared by NDOT and should be reviewed in conjunction with this report to obtain the full extent of the issues evaluated.

Background

In February 2000, the Nevada Department of Transportation (NDOT) began construction on the Carson City Freeway (US395). NDOT constructed sound walls along the new freeway corridor to address the potential impacts of traffic noise to adjacent residential land uses. The project includes about four and one half miles of sound walls placed along the shoulder. The sound walls vary in height from 6 to 17 feet. A portion of the sound wall is shown in the picture below.



Sound wall along Carson City Freeway (US 395)
Source: NDOT <http://www.ccfreeway.com>

NDOT's final design of the sound walls for the Carson City Freeway project pre-dated the design and construction of the North Carson Crossing shopping center located in the area southwest of the new US395/College Parkway Interchange. Because the final build-out of the commercial area was unknown at the time, NDOT's design team was unable to take into account the noise mitigating effects of the recently constructed 32-foot high Home Depot building and the 13-foot high perimeter concrete wall. As a result, the sound wall along the shoulder of south bound US395 had to be constructed to a point about halfway up the East College Parkway to US 395 southbound onramp in order to provide adequate noise shielding for the residential neighborhood south of North Carson Crossing.

Figure 1 provides an overview of the particular area of concern.

The southbound US395 sound wall that begins near the East College Parkway interchange currently blocks the view to the North Carson Crossing shopping area from all northbound US 395. Because the view is blocked, there is a risk of substantial long-term economic impact to the North Carson Crossing shopping center.

What was not known until recently, was how much of the US395 sound wall could have been avoided (or could now be removed) based on the noise mitigation effects of the Home Depot building and the 13-foot perimeter wall.

The owner's of North Carson Crossing (North Carson Crossing, LLC) and NDOT have been working together to develop a plan that can meet the environmental noise mitigation requirements for the adjacent residential area as well as minimize the economic impact on the retail center. As shown in Figure 1, the plan is to reduce the length of the sound wall so that the North Carson Crossing center can be seen from US 395 northbound traffic.

The effect of removing this portion of the US 395 sound wall was evaluated by NDOT to ensure the level of noise reduction provided by the Home Depot building and the perimeter concrete wall sound wall would match or exceed what is currently provided. A separate study was recently conducted by Marty Rupert of the Nevada Department of Transportation (NDOT). NDOT's study has shown that the portion of the sound wall can be removed if the North Carson Crossing's 13-foot perimeter sound wall is extended to the NDOT right-of-way. With this additional extension, the noise level reduction provided by the 32-foot high Home Depot building and the 13-foot perimeter sound wall will exceed that provided by the portion of the US395 sound wall to be removed.

Figure 2 shows the proposed new US395 sound wall configuration as well as the required perimeter sound wall extension. The relevant noise modeling locations (i.e., points in the backyards of the nearest residential homes) NDOT used in the original noise design process are also shown for cross reference purposes to the NDOT report.

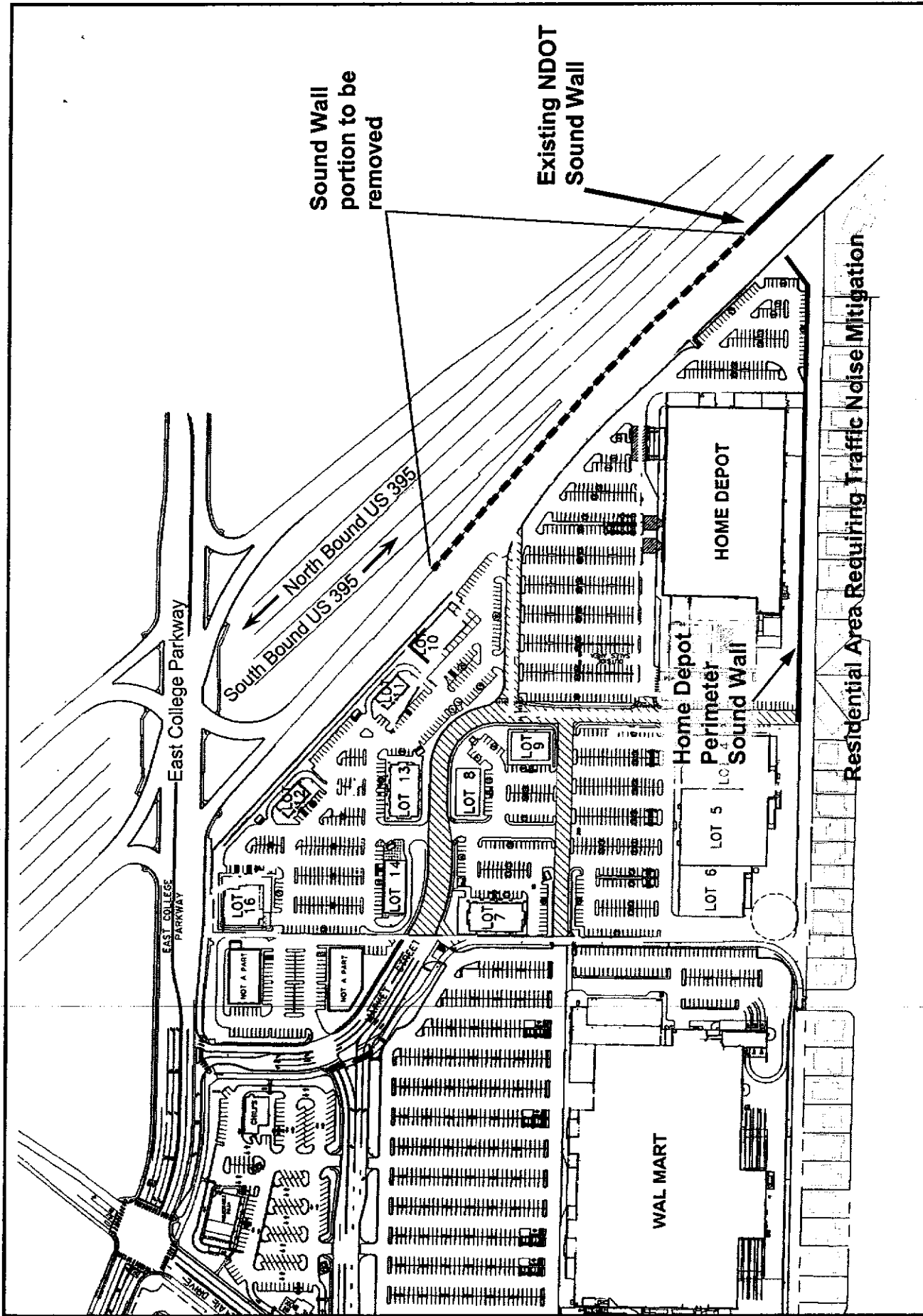


Figure 1
Project Area Overview
North Carson Crossing Center



Legend



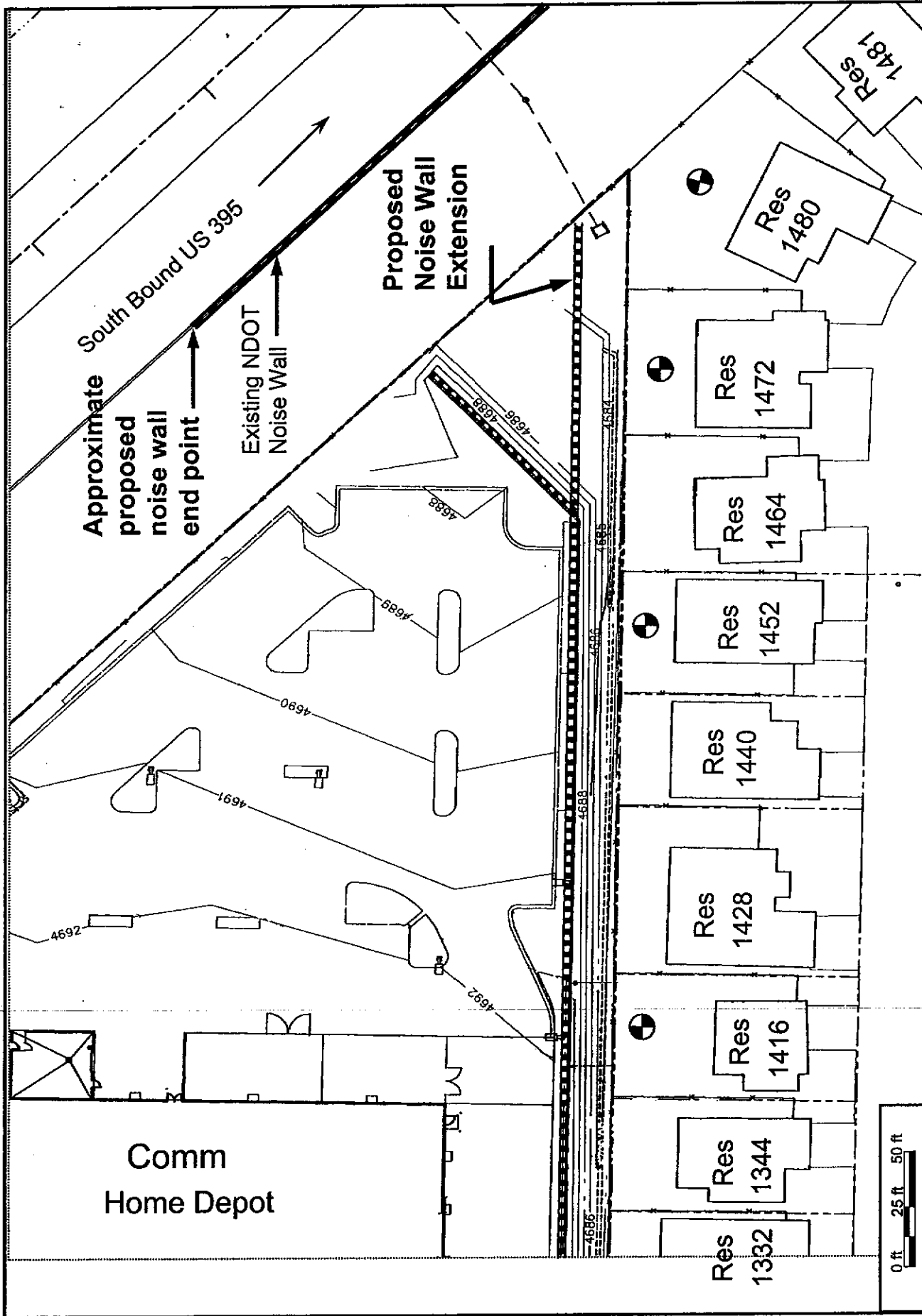


Figure 2
Proposed Noise Wall Configurations
North Carson Crossing Center



Legend
 Res = Residential 1332 through 1481 (Street address on Northhill Dr)
 Comm = Commercial (all First Floor) = NDOT Model Location

Purpose of this Report

In response to comments from local residents and the City of Carson, North Carson Crossing, LLC solicited this additional acoustical study to address two primary concerns. First, the City of Carson expressed concern over what the impacts would be on the second floor of the two story homes. The second concern expressed by the local residents was whether the perimeter sound wall would continue to provide the necessary traffic noise mitigation in the unlikely event the Home Depot building is destroyed by fire.

To address these concerns, NDOT's exact noise model input files were used to calculate the second floor noise levels and used again to calculate the effect of removing the Home Depot building. The sections that follow include a brief description of noise terminology, the second floor analysis, and the Home Depot building analysis.

Noise Terminology and Criteria for Residential Land Uses

All noise levels referred to in this report are expressed in terms of the A-weighted scale (dBA). The A-weighted scale is used in most ordinances and standards, including the applicable standards for this project. To account for the time-varying nature of noise, several noise metrics are useful. We define the equivalent sound pressure level (L_{eq}) as the average noise level, on an energy basis, for a stated time period (for example, hourly). The L_{eq} is the preferred noise level descriptor for traffic noise analysis and was used for this analysis.

For a sense of perspective, normal human conversation ranges between 44 and 65 dBA when people are about 3 to 6 feet apart. Very slight changes in noise levels, up or down, are generally not detectable by the human ear. The smallest change in noise level that a human ear can perceive is about 3 dBA, while increases of 5 dBA or more are clearly noticeable. For most people a 10 dBA increase in noise levels is judged as a doubling of sound level, while a 10 dBA decrease in noise levels is perceived to be half as loud. For example, traffic noise levels at 70 dBA are perceived as twice as loud as the traffic noise levels at 60 dBA.

In Nevada, traffic noise analyses are conducted in accordance with the Federal Highway Administration's (FHWA) noise standard as outlined in the Code of Federal Regulations 23 CFR 772 "Procedures for Abatement of Highway Traffic and Construction Noise." Noise abatement measures are considered when the predicted traffic noise levels for the Design Year (typically 20 years into the future) *approach* or exceed the Noise Abatement Criteria (NAC) as identified in the FHWA noise standard. NDOT defines "approach" as 1 dBA less than the NAC. The NAC for residential land use is an exterior noise level of 67 dBA- L_{eq} . Therefore, in Nevada, noise abatement measures are considered for residential land uses if the exterior modeled Design Year noise levels are 66 dBA- L_{eq} or higher.

Second Floor Noise Levels

FHWA and NDOT specify that only first floor receiver locations are to be used in traffic noise analyses. FHWA and NDOT do not provide noise abatement measures for second floor receivers. However, for the purposes of this independent study, second floor receivers are used to reply to the concerns expressed by the City of Carson.

Figure 3 shows the three 2-story homes in the neighborhood immediately south of North Carson Crossing. Using the NDOT noise model input files, two different scenarios were modeled for these three second floor locations. Second floor model locations were set at a height of 15 feet above ground level. The first scenario could be described as the baseline condition. Under this baseline condition, the original NDOT noise model used to design and build the current US395 sound wall was used to determine what the noise levels would be at the three second-floor locations had NDOT included them in their original modeling work. In other words, if the North Carson Crossing land had remained undeveloped (that is, No Home Depot building and no perimeter sound wall), what would the noise levels be at these second floors with the full US395 sound wall as it stands now?

The second scenario evaluates what the noise levels would be for the same second floor receivers if the portion of the US395 sound wall is removed. This second condition includes the effects of the Home Depot building and the perimeter wall with the proposed straight-line extension discussed earlier in this report.

By comparing the two different scenarios, the effects of the proposed sound wall revisions on the second floor receivers can be explained.

Table 1 provides the noise modeling results of the two scenarios. The modeling locations are listed by the street address of each two-story home as shown in Figure 3. With the proposed sound wall reconfigurations and the shielding effect of the Home Depot building, traffic noise levels at the second floors of 1344 and 1416 Northhill would be 3 and 1 dBA lower, respectively, than with only NDOT's existing sound wall. The 3-dBA reduction at 1344 would be considered a "barely perceptible" decrease by a person with average hearing. Therefore, the second floor at 1344 Northhill could be described as receiving a small noise reduction benefit from the Home Depot building and perimeter wall.

The 1 dBA decrease modeled at 1416 Northhill does not constitute a "perceptible change" and therefore should be characterized as having the same traffic noise levels under both scenarios. Similarly, at 1464 Northhill, the second floor noise level would be 1 dBA higher than with NDOT's existing sound wall. The 1 dBA increase would not be a perceptible change and therefore both scenarios would be characterized as having the same traffic noise levels.

Therefore, the second floor analysis shows that there would be essentially no difference in traffic noise levels, if the US395 sound wall is reduced in length and the perimeter sound wall is extended as proposed by North Carson Crossing LLC. In addition, it should be noted that the modeled noise levels under the proposed sound wall reconfigurations at all second floor receivers are well below NDOT's noise abatement criteria of 67dBA- L_{eq} .

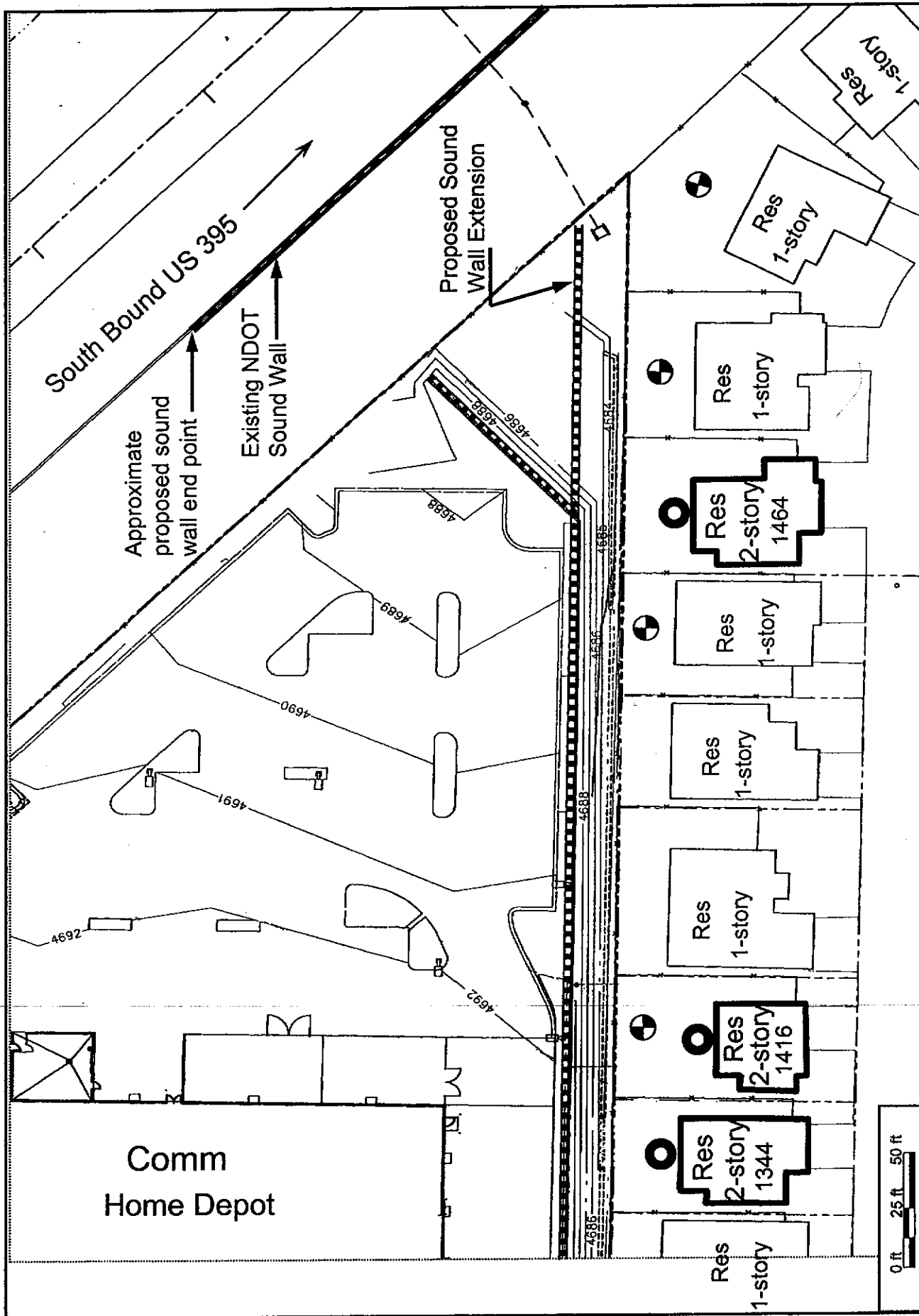


Figure 3
Second Floor Modeling Locations
North Carson Crossing Center



Legend

Res = Residential

Comm = Commercial

○ = Second Floor Model Location

⊙ = NDOT Model Location (all First Floor)

Table 1
Noise Modeling Results in dBA- L_{eq} for Second Floor Locations

Street Address of 2-Story Home	Scenario 1 (With Full US395 Sound Wall as Built)	Scenario 2 (With Home Depot Building and Proposed Sound Wall Reconfigurations)	Noise level difference between Scenario 1 and 2
1344 Northhill	58	55	3 ^a
1416 Northhill	58	57	1 ^b
1464 Northhill	60	61	(1) ^b

^aThe second floor US395 traffic noise levels at 1344 Northhill would receive an additional noise reduction benefit from effects of the Home Depot building and proposed modifications to the sound walls.

^bThe second floor US395 traffic noise levels at 1416 and 1464 Northhill would differ by 1 dBA which is considered an imperceptible difference by a person with average hearing.

Home Depot Building Analysis

Figure 4 shows the four residences selected to analyze the noise reduction effects of the Home Depot building. These residences were selected because they are situated directly behind the Home Depot building and receive the greatest benefit from traffic noise reduction. Using the NDOT noise model input files, two different conditions were modeled for these four residential receiver locations. The first condition includes the Home Depot as it has been constructed. The second condition models the unlikely event that the Home Depot is destroyed by fire or is otherwise removed to make room for a different project on the land.

Table 2 provides the noise modeling results of the two conditions. The modeling locations are listed by the street address as shown in Figure 4. For perspective on the noise reduction effects of the North Carson Crossing structures, the traffic noise levels for the same four residences based on NDOT's original noise model are also provided. By comparing the levels from NDOT's original model to those under "Condition 1", the noise reduction provided by the North Carson Crossing structures can be estimated. The Home Depot building and perimeter wall provide an additional 5 to 8 dBA reduction in traffic noise levels to those residences behind the Home Depot building beyond that provided by the NDOT sound wall.

If the Home Depot were destroyed in a fire ("Condition 2" in Table 2) the noise levels would increase slightly (0 to 2 dBA). A 2 dBA increase is considered imperceptible to the person with average hearing and, therefore, it can be concluded that if the Home Depot building were destroyed in a fire, traffic noise levels in the residential area would remain unchanged. Furthermore, it can also be concluded that the perimeter concrete wall is principally responsible for the additional traffic noise reduction provided to the residences behind the Home Depot building. Finally, it should be noted that the modeled noise levels under the proposed sound wall reconfigurations would remain well below NDOT's noise abatement criteria of 67 dBA- L_{eq} with or without the Home Depot building.

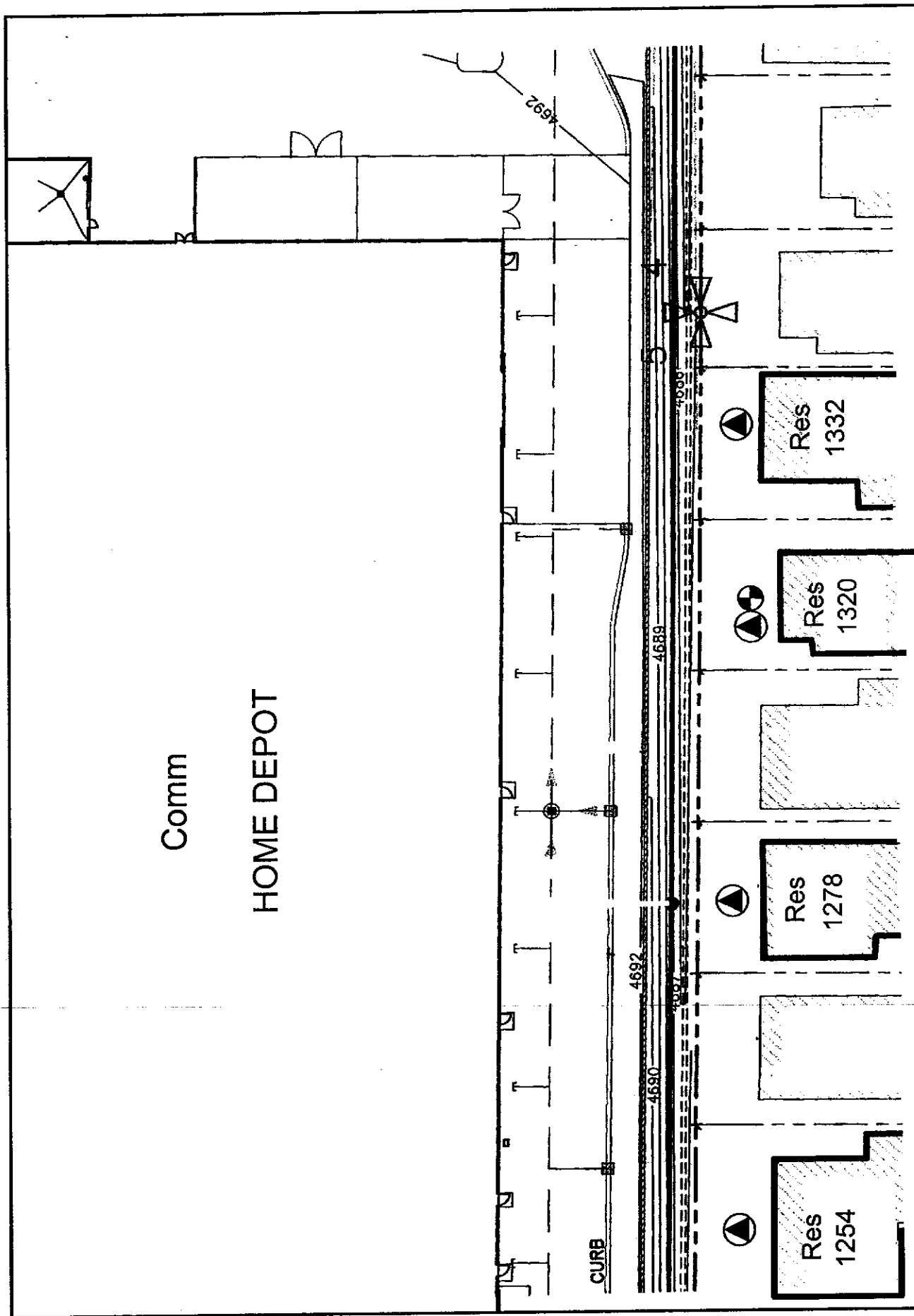


Figure 4
Model Locations behind Home Depot
North Carson Crossing Center



Legend
 Res = Residential
 Comm = Commercial
 (Circle with triangle) = Model Receiver Location (First Floor)
 (Circle with cross) = NDOT Model Location (First Floor)

Table 2
Noise Modeling Results in dBA- L_{eq} for Homes Behind the Home Depot Building

Street Address	NDOT Original Model ^a <i>(With Full US395 Sound Wall as Built – No North Carson Crossing development)</i>	Condition 1 <i>(with Home Depot building and proposed sound wall reconfigurations)</i>	Condition 2 <i>(Home Depot Building destroyed in fire but proposed sound wall reconfigurations remain)</i>
1254 Northhill	58	50	51
1278 Northhill	58	51	52
1320 Northhill	58	52	52
1332 Northhill	58	53	53

^a These noise levels do not include the noise shielding effects of the Home Depot or the perimeter sound wall. Comparing these values to Condition 1 reveals the noise reduction benefit from the North Carson Crossing structures.

Conclusions

The proposed revisions to the NDOT sound wall along the shoulder of south bound US 395 would have no adverse effect on the traffic noise levels at the second floor of the two story homes.

The Home Depot building provides additional traffic noise reduction benefits but is not required to maintain the improved noise level environment at those residences directly behind the building. Without the Home Depot building, the perimeter wall with proposed straight-line extension would continue to provide noise level reductions greater than those reductions provided by the existing NDOT sound wall.

DEVELOPER AGREEMENT

This Agreement, dated this _____ day of _____, 2009, by and between the STATE OF NEVADA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter called the DEPARTMENT, Carson City, Nevada, a consolidated municipality under the Nevada Revised Statutes, hereinafter called the CITY, and North Carson Crossing LLC, a Nevada limited liability company, hereinafter called the DEVELOPER.

WITNESSETH:

WHEREAS, pursuant to the provisions contained in Chapter 408 of the Nevada Revised Statutes, the Director of the DEPARTMENT may enter into agreements necessary to carry out the provisions of the Chapter; and

WHEREAS, the DEPARTMENT, as part of its construction of Phase 1B of the Carson City (US395/I580) Freeway in Carson City, Nevada (hereinafter the "FREEWAY"), constructed a soundwall (hereinafter the "SOUNDWALL") along a portion of the western side of the FREEWAY adjacent to the southbound lanes of the FREEWAY; and

WHEREAS, DEVELOPER owns land to the west of, and adjacent to, the FREEWAY at the southwest corner of the intersection of the FREEWAY and East College Parkway in Carson City, Nevada; and

WHEREAS, DEVELOPER is developing its property as a commercial center and already has significant tenants such as Wal-Mart and Home Depot; and

WHEREAS, the DEVELOPER has constructed a soundwall along its southern property line and desires to modify the soundwall (hereinafter the NEW SOUNDWALL) and remove a portion of approximately nine hundred and twenty four (924) linear feet of the SOUNDWALL along the FREEWAY as depicted in Exhibit "A," attached hereto and incorporated herein, said endeavor hereinafter being called the SOUNDWALL PROJECT; and

WHEREAS, the DEPARTMENT and the DEVELOPER have both conducted recent noise studies which have concluded that the SOUNDWALL PROJECT will maintain the required noise mitigation for all of the nearby residential property owners; and

WHEREAS, the SOUNDWALL PROJECT will be of benefit to the DEPARTMENT, the CITY and the people of the State of Nevada by improving the level of noise mitigation for the majority of the adjacent property owners while increasing the visibility of the DEVELOPER's commercial center and scenic vistas for the traveling motorist; and

WHEREAS, the SOUNDWALL PROJECT will result in better visibility to the DEVELOPER's property and commercial center thereby increasing the value of its property, and thus the DEVELOPER agrees to assume all costs associated with the SOUNDWALL PROJECT; and

WHEREAS, the CITY will benefit financially from the DEVELOPER's improvements and the SOUNDWALL PROJECT in that the CITY will enjoy increased sales and property tax revenues as a result of the SOUNDWALL PROJECT; and

WHEREAS, the purpose of this Agreement is to identify DEPARTMENT, CITY and DEVELOPER responsibilities associated with the SOUNDWALL PROJECT; and

WHEREAS, the CITY shall ensure that the DEVELOPER's long term commitments regarding noise mitigation and maintenance of the NEW SOUNDWALL are enforced in perpetuity; and

WHEREAS, the DEPARTMENT, the DEVELOPER and the CITY are willing and able to perform the services described herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is agreed as follows:

ARTICLE I - DEVELOPER AGREES

1. To submit to the DEPARTMENT, within ten (10) calendar days following the mailing date of the Notice to Proceed, a cashier's check in the amount of Fifteen Thousand and No/100 Dollars (\$15,000.00) which represents the estimated cost of the DEPARTMENT's participation in the soundwall studies and involvement in the SOUNDWALL PROJECT and all DEPARTMENT related costs. The cashier's check will be made payable to the State of Nevada, Department of Transportation and mailed pursuant to Paragraph 5, ARTICLE III, IT IS MUTUALLY AGREED. The cashier's check will be deposited by the DEPARTMENT into the State Treasury. All funds in the account become the property of the DEPARTMENT and will be used to fund the actual costs of the soundwall studies and work related to the SOUNDWALL PROJECT.

2. To provide the engineering studies, design and specifications (stamped by a Professional Engineer) for the removal of the existing SOUNDWALL along the FREEWAY including but not limited to noise mitigation, removal, aesthetics, traffic control, drainage and fencing. To submit to the DEPARTMENT and the Federal Highway Administration (hereinafter the "FHWA") a Right-Of-Way Encroachment Permit for the work to be performed on the SOUNDWALL PROJECT within the DEPARTMENT's right-of-way.

3. To allow the DEPARTMENT to observe, review and inspect the NEW SOUNDWALL and SOUNDWALL PROJECT to ensure the work associated with this Agreement meets the DEPARTMENT's standards and other requirements as set forth in this Agreement.

4. To pay for all costs associated with the SOUNDWALL PROJECT including but not limited to design, engineering, demolition, construction engineering, right-of-way, utility relocation, permits and inspection.

KW

5. To provide as-built plan information and topographic survey, mapping and terrain information to the DEPARTMENT in a format acceptable to the DEPARTMENT to confirm existing conditions and design elevations for final grading and structures.

6. To conduct meetings with the FHWA, and satisfy any concerns or requirements that it may impose for the SOUNDWALL PROJECT.

7. To conduct a public process to notify adjacent property owners and solicit input on the SOUNDWALL PROJECT including but not limited to conducting at least one (1) public meeting that allows the opportunity for the public to provide written comments. To document and address any reasonable concerns, as determined by the DEPARTMENT and the CITY. Provide the DEPARTMENT with copies of all public comment, responses and resolution action which the DEVELOPER will take prior to commencing the SOUNDWALL PROJECT.

8. To perpetually refrain from removing or damaging the NEW SOUNDWALL, and to perpetually maintain and repair any damage to the NEW SOUNDWALL, in perpetuity, so as to preserve the NEW SOUNDWALL in its current configuration, and so as to preserve in perpetuity, the FREEWAY noise mitigation effects of the NEW SOUNDWALL, its structural integrity and its aesthetic qualities. As used in this Agreement, maintenance shall include but not be limited to repair, reconstruction, patching, sealing, painting, and the elimination of graffiti. The DEVELOPER shall further refrain from modifying the NEW SOUNDWALL in such a way as to have a materially negative impact on the NEW SOUNDWALL's ability to mitigate noise from the FREEWAY.

9. The DEVELOPER's obligations under this Agreement, including but not limited to its continuing obligation to maintain and repair the NEW SOUNDWALL in perpetuity as provided in this Agreement, shall constitute covenants running with the land and shall bind subsequent owners of the DEVELOPER's property, including but not limited to the DEVELOPER's successors and assigns. This Agreement shall be recorded at the Carson City Recorder's Office prior to the DEPARTMENT's approval of the Right-of-Way Encroachment Permit.

10. DEVELOPER agrees that if, after thirty (30) days' written notice from the CITY (or such shorter notice as emergency circumstances may dictate is reasonable), it fails to maintain and repair the NEW SOUNDWALL as provided herein, the CITY'S employees, agents and/or contractors shall have the right to cross the DEVELOPER's property in order to access the NEW SOUNDWALL for purposes of evaluating and/or effecting maintenance and repairs on or to the NEW SOUNDWALL. In exercising this right to cross the DEVELOPER's property, the CITY shall use that route which is the least intrusive, and in a manner which minimizes inconvenience and interruptions to the DEVELOPER, its tenants and their patrons. ~~DEVELOPER agrees that the CITY'S cost to evaluate, repair and maintain the NEW SOUNDWALL, if not paid by the DEVELOPER within thirty (30) days of being billed for said costs, shall constitute a secured lien against the parcel of real property supporting that portion of the DEVELOPER'S commercial center and NEW SOUNDWALL which was evaluated, maintained or repaired. Said lien may be foreclosed by using the same procedures set forth in NRS 116.31162 through 116.31168 (and or any successor and additional statutes).~~

11. If, the total funds in the account are insufficient to cover the actual costs arising from the DEPARTMENT's participation in the soundwall studies and SOUNDWALL PROJECT, the DEPARTMENT shall have the right to request, in writing, and obtain from the DEVELOPER, additional cashier's checks. The DEVELOPER will submit the additional cashier's checks within ten (10) calendar days of the service of such notification for the additional estimated amounts needed by the DEPARTMENT. If upon completion of the improvements a final amount is still due, the DEVELOPER will make payment within thirty (30) calendar days of service of the final Billing Invoice from the DEPARTMENT. Such correspondence shall be deemed to have been served on the date of postmark.

ARTICLE II – CITY AGREES

1. To ensure, through the execution of this Agreement, that the NEW SOUNDWALL is maintained on the DEVELOPER's property at a level determined by the DEPARTMENT to be necessary to preserve the noise mitigation levels as described and determined by the studies, structural integrity and aesthetic qualities in perpetuity.

2. To perform the necessary inspection and maintenance of the NEW SOUNDWALL should the DEVELOPER fail to perform such obligations as required under this Agreement.

3. To participate in coordination meetings and/or public meetings at the request of the DEVELOPER and the DEPARTMENT and to assist with and support the DEVELOPER's SOUNDWALL PROJECT and to otherwise fully cooperate with the DEVELOPER and the DEPARTMENT on the SOUNDWALL PROJECT.

4. To reimburse the DEPARTMENT for all costs associated with the improvements necessary to mitigate noise from the freeway should changes occur within the DEVELOPER's proposed property limits (Exhibit "A") that reduce the noise mitigation levels from the levels established in the DEVELOPER's noise mitigation studies attached hereto and incorporated herein as Exhibit "B". The CITY shall also reimburse the DEPARTMENT for all costs associated with the maintenance and repair of the NEW SOUNDWALL and SOUNDWALL PROJECT in the event that the DEVELOPER and CITY fails to perform the same. These costs shall include but not be limited to the studies, planning, engineering, construction and administration of all work necessary to mitigate the noise due to the change.

ARTICLE III - DEPARTMENT AGREES

1. To provide the DEVELOPER with copies of available studies, plans and digital design and mapping files used for the FREEWAY construction in the area of the DEVELOPER's property. To participate in meetings with the FHWA at the request of DEVELOPER and the CITY.

2. To provide the DEVELOPER with the criteria used for the design of the SOUNDWALL along the FREEWAY and utilize the same criteria for the studies conducted by the DEPARTMENT. To incorporate site information provided by the DEVELOPER into the models used to study noise relating to the FREEWAY.

(Kw)

3. To provide the DEPARTMENT's noise study information to the DEVELOPER for the NEW SOUNDWALL and the SOUNDWALL PROJECT.

4. To participate in coordination meetings and/or public meetings at the request of the DEVELOPER and the CITY to support the results of the DEPARTMENT's noise study information related to the NEW SOUNDWALL and the SOUNDWALL PROJECT.

5. To review and comment on engineering studies and design information submitted by the DEVELOPER to the DEPARTMENT. The DEPARTMENT's review and acceptance of the DEVELOPER's submittal information does not warrant that the documents are free of defects. The DEPARTMENT will not assume responsibility for increased costs or delay due to errors or omissions associated with the submitted information.

6. To review and approve the Right-Of-Way Encroachment Permit submitted by the DEVELOPER for the SOUNDWALL PROJECT. DEPARTMENT'S approval will be dependent on concurrence by the Federal Highway Administration and the DEVELOPER's ability to satisfy the reasonable concerns raised by the public.

7. To observe, review and inspect the NEW SOUNDWALL and SOUNDWALL PROJECT to ensure the work associated with this Agreement meets the DEPARTMENT's standards and other requirements as set forth in this Agreement.

8. To deposit the DEVELOPER's cashier's check into the State Treasury Account identified by the Agreement Number. The DEPARTMENT will withdraw from the account monthly to cover the cost of the DEPARTMENT's participation in the work related to the NEW SOUNDWALL and the SOUNDWALL PROJECT. The DEVELOPER will be notified of the DEPARTMENT's costs and DEPARTMENT withdrawals through a Billing Invoice. If the funds in the Deferred Revenue Holding Account become insufficient to cover the cost of the DEPARTMENT's participation in the work related to the NEW SOUNDWALL and SOUNDWALL PROJECT the DEPARTMENT shall have the right to request of the DEVELOPER, and obtain from the DEVELOPER, the tender of additional cashier's checks. The DEVELOPER will submit additional cashier's checks within ten (10) calendar days of the DEPARTMENT's request for the additional estimated amounts needed to participate in the work related to the NEW SOUNDWALL and SOUNDWALL PROJECT.

9. After all of the DEPARTMENT's costs for the NEW SOUNDWALL and SOUNDWALL PROJECT have been fully reimbursed, any remaining principal balance in the account will be refunded.

ARTICLE III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from the date first written above and shall continue into perpetuity, and shall be binding upon each of the parties' successors, executors, administrators, and assigns, and each of the parties' successors, executors, administrators and assigns shall be bound by this Agreement to the full legal extent to which the parties are bound with respect to each of the terms of this Agreement.

2. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party and fully signed by all parties.

3. This Agreement may be terminated by mutual consent through a writing signed by all parties hereto. In addition, the DEVELOPER may unilaterally terminate this Agreement by giving written notice to the DEPARTMENT and the CITY of such cancellation at any time before commencing the actual removal of the existing SOUNDWALL along the FREEWAY. Should this Agreement be terminated by the DEVELOPER or the CITY prior to completion of the SOUNDWALL PROJECT, the DEVELOPER will reimburse the DEPARTMENT for all costs incurred by the DEPARTMENT because of the Agreement termination. Further, the parties expressly agree that this Agreement shall be terminated immediately, if for any reason federal and/or State Legislature funding ability to satisfy this Agreement is not appropriated or is withdrawn, limited, or impaired, and in such event, the DEVELOPER shall waive all claims for damages.

4. The parties agree to allow one another to observe, to inspect SOUNDWALL PROJECT construction and to review applicable change orders in a timely manner so as to prevent SOUNDWALL PROJECT delay. It is the intention of the parties that this review does not constitute a joint exercise of powers pursuant to NRS 277.080 to 277.170.

5. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if: (1) delivered personally in hand; or (2) by telephonic facsimile with simultaneous regular mail; or (3) mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the addresses set forth below; or (4) e-mailed to the e-mail addresses set forth below:

FOR DEPARTMENT: Susan Martinovich, P.E., Director
Attn: Jim Gallegos
Nevada Department of Transportation
Project Management Division
1263 South Stewart Street
Carson City, NV 89712
Phone: 775-888-7320
Fax: 775-888-7322
E-mail: jgallegos@dot.state.nv.us

FOR DEVELOPER: Kent Witt
North Carson Crossing, LLC
P.O. Box 12457, Reno, NV 89510
4760 Ranch Land Circle, Reno, NV 89511
Phone: 775-853-3073
Fax: 775-853-3074
E-mail: KentReno@aol.com

FOR CITY: Andy Burnham, Public Works Director
City of Carson City
201 North Carson Street, #2
Carson City, Nevada 89706
Phone: 775-887-2100
Fax: 775-887-2164
E-mail: aburnham@ci.carson-city.nv.us

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6. To the fullest extent permitted by law, the DEVELOPER shall defend, indemnify and hold harmless the State of Nevada, the DEPARTMENT, the CITY, and their employees, officers and agents, from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorney's fees, that are caused by the negligence, errors, omissions, reckless or intentional misconduct of the DEVELOPER and/or the employees or agents of the DEVELOPER in the performance of this Agreement.

7. With regard to the liability of the DEPARTMENT and the CITY as to claims brought against them by each other, the DEVELOPER and persons and entities not parties to this Agreement, the DEPARTMENT and the CITY do not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Agreement liability of the DEPARTMENT and the CITY shall not be subject to punitive damages. Actual damages for any DEPARTMENT and or CITY breach shall never exceed the amount of funds which have been appropriated for payment under this Agreement, but not yet paid for the fiscal year budget in existence at the time of the breach.

8. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by any party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

9. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the exclusive jurisdiction of the Nevada state district courts for enforcement of this Agreement.

10. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement, and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

11. To the extent not otherwise provided within this Agreement, all or any property presently owned by each party shall remain in such ownership upon termination of this Agreement, and there shall be no transfer of property between the parties during the course of this Agreement.

12. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in, or confer on, the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

13. Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records and documents pertaining to this Agreement and present, at any reasonable time, such information for inspection, examination, review, audit and copying at any office where such records and documentation is maintained. Such records and documentation shall be maintained for three (3) years after final payment is made.

14. The parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Each party is and shall remain separate and distinct from the other party and shall have the right to supervise, manage, operate, control and direct performance of the details incident to its duties under this Agreement.

15. No party hereto shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other parties. To the extent, however, that an assignment, transfer or delegation occurs, this Agreement shall be binding on and shall inure to the benefit of the parties' respective successors and assigns.

16. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

17. Each party shall keep confidential all information, in whatever form, produced, prepared observed or received by that party to the extent that such information is confidential by law or otherwise required by this Agreement.

18. The parties hereto acknowledge that they have read and reviewed this Agreement and have had the opportunity to negotiate, and confer with counsel regarding, its terms. Accordingly, this Agreement shall be construed neither for nor against either party (i.e., the legal principle of *contra proferentem* shall not apply when interpreting this Agreement), but rather it shall be given a fair and reasonable interpretation in accordance with the meaning of its terms and the intent of the parties.

19. Each party hereto shall execute and deliver such instruments and take such other actions as any other party may reasonably require in order to carry out the intent of this Agreement.

20. This Agreement constitutes the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Attorney General.

(Kw)

21. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. Executed counterparts of this Agreement may be delivered by facsimile transmission and shall be effectively delivered upon the date such transmission is received by the other party. Any party delivering this Agreement by facsimile shall also deliver an original "ink signed" copy of its signature page to the other parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

North Carson Crossing, LLC
P.O. Box 12457, Reno, NV 89510
4760 Ranch Land Circle, Reno, NV 89511

State of Nevada, acting by and through its
DEPARTMENT OF TRANSPORTATION

By: Kent Witt
Kent Witt, Managing Member

By: _____
Director

Recommended:

Thor Dyson, District Engineer

Approved as to Legality & Form:

Deputy Attorney General

City of Carson City
201 North Carson Street
Carson City, Nevada 89701

By: _____
Robert L. Crowell, Mayor

Recommended:

Andrew Burnham, Public Works Director

Approved as to Legality & Form:

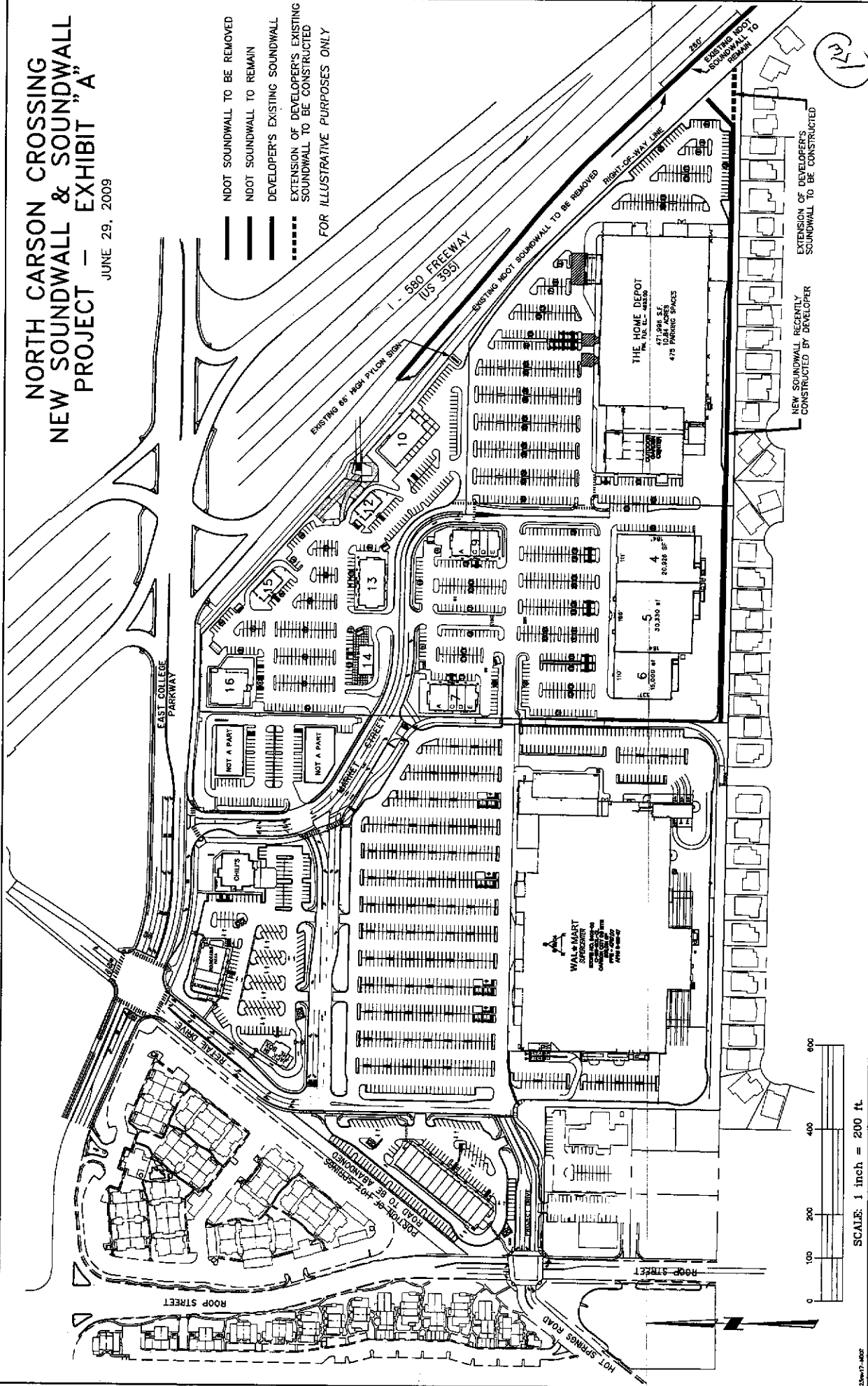
Deputy District Attorney

(Kw)

NORTH CARSON CROSSING NEW SOUNDWALL & SOUNDWALL PROJECT — EXHIBIT "A"

JUNE 29, 2009

- NDOT SOUNDWALL TO BE REMOVED
- NDOT SOUNDWALL TO REMAIN
- DEVELOPER'S EXISTING SOUNDWALL
- EXTENSION OF DEVELOPER'S EXISTING SOUNDWALL TO BE CONSTRUCTED
- FOR ILLUSTRATIVE PURPOSES ONLY



SCALE: 1 inch = 200 ft.