

MEMORANDUM

DATE: March 9, 2009

TO: CMPA Board of Directors

FROM: Owen Beitsch, PhD, AICP, CRE
REAL ESTATE RESEARCH CONSULTANTS
14 East Washington Street, Suite 500
Orlando, FL 32801

PH (407) 843-5635 FAX (407) 839-6197

RE: Status of MPDP negotiations

If you attended the City's workshop in January, then you are aware that staff and consultants were charged with negotiating the remaining critical points in the development agreement proposed by Maritime Park Development Partners (MPDP). Al Coby provided brief insights into the progress of those discussions late last week. At this point, the final draft agreement must still be fully vetted with the reasonable expectation it will continue to meet the requirements of both CMPA and the City. If so, the agreement would set the stage for the advanced planning and implementation of Maritime Park.

Today's brief memo summarizes the critical terms and conditions contained in the development agreement, most of which should be familiar to you in their general form. Attached here are several items: (1) a copy of Al Coby's memorandum submitted to City Council a few weeks ago, (2) my last memo, and (3) concept plans prepared by MPDP illustrating the proposed public improvements to be constructed within the current budget limitations.

MPDP has drafted a *summary* of the final draft development document which I have not yet had the opportunity to read in its final form. This summary is *expected* to be distributed to you later in the day but I am unable at this time to speak to its consistency with conversations that have occurred throughout the weekend. Since there has been verbal and e-mail agreement on all points, I'll be optimistic regarding its consistency. While I would also like to have included the memorandum prepared by Barry Abramson, the City's consultant, it was not yet finished. I don't want to characterize Barry Abramson's correspondence incorrectly but my impression is that his report will reconcile to my own brief report. The *complete* draft agreement, according to MPDP's

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representations, will itself be provided on March 13th for CMPA's use. At that point, CMPA can forward same onto City Council.

As I reported to you in February, the basic points left to be settled on that date were the same as they had been for many weeks before, all of which required some further deliberation and due diligence. Without belaboring the subtleties and complexities of the issues, it seems that the needs of all parties have been addressed with the requirements of CMPA, the City, and the developer codified in an apparently satisfactory draft document. I think it is appropriate to thank the City for working on a very compressed timetable so this memorandum could be distributed today. Finally, many comments were received from board members and, where practical or doable, there has been effort to have these incorporated in the final draft.

While certain terms contained in the final draft document are likely to be different, its framework remains relatively intact and should be recognizable to you. Specifically, the text has been edited to reflect evolving terms but the basic structure follows the 2006 agreement which already exists between the City and CMPA. Even if key terms have been altered to acknowledge the addition of an outside developer, it will be familiar. Once this document is approved and signed, the burden will shift to MPDP to take the business and strategic actions necessary to secure periodic and interim approvals from the CMPA and the City.

Several people, understandably, have asked what, exactly, will be constructed for \$38,000,000. First, bear in mind that the design criteria control the budgetary priorities and content of the program which only CMPA can alter. That said, it is generally assumed that most improvements considered in the design criteria will be constructed with the possible exception of the conference center. Second, the process laid out in the development agreement speaks specifically to refining and tightening the budgets....while it seems a remote possibility at the moment, even the conference center might be implemented in some form as budgets are finalized. The current thinking is illustrated in the attached exhibits. In effect, these drawings advise the form and content that the budget can absorb, again subject CMPA and City approval.

Since a summary of the draft document will follow and because I will be available on March 13th to go over it in more detail as I believe the terms to exist, I am addressing in this memo key comments or concerns as they were expressed by the City. I believe that satisfying these points effectively brings the views and needs expressed to me by many member of CMPA in alignment with those articulated by the City. I am exercising some editorial freedoms in summarizing Al Colby's comments so you are encouraged to compare the items below as they appear in their original form. Al Coby's comments are in bold. Mine follow.

- **Should MPDP assume [all roles] it brings into question the future role of the CMPA.**
 - CMPA has active management, advisory, coordinating, and facilitating roles.
 - These roles will be particularly important as the initial public improvements are planned and implemented.
 - The \$38,000,000 budget anticipates CMPA will secure technical support to fulfill, in part, the body's oversight function.

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- Outside technical assistance or support was envisioned from the beginning of the negotiations although the budget has been adjusted to allow additional funding for this activity.
- **MPDP's proposal deviates from the RFQ**
 - City appears satisfied that this is not the case.
 - The RFP did not exclude multiple roles
 - The budgeting procedures assure that CMPA has adequate technical expertise to fulfill a role that *may* have been achieved were MPDP acting *only* as the developer.
- **The development fee should be specifically established in the Agreement.**
 - Fee is 4% and terms of calculating it are clear.
 - Costs that must be absorbed within this budget are clearly articulated.
 - In part, these stipulations express the concerns and priorities of CMPA.
- **The development fee is front-loaded**
 - Fees are paid only in accordance with progress on public improvements. That is, they will be expended at the pace of development and construction.
 - Some initial technical costs will be reimbursed with documentation.
- **Allowing MPDP to function as both the Developer and ...Contractor requires ... additional ... management**
 - As noted above, some professional expertise was always contemplated within the management budget. Staff technical capacity has been enhanced.
 - The development budget has been specifically adjusted to include financial capacity for an owner's rep which should be secured soon.
- **... as general contractor, [allowable fees] should be specified ... the ultimate disposition of any contingencies should be established.**
 - Fees (overhead and profit) are capped at 3%.
 - All cost savings, if any, are returned to the City.
 - The agreement allows for a 4% construction contingency if a corresponding owner's contingency of 4% is also budgeted. These combined fees compare to 7% originally outlined.
 - The general contractor's part of the contingency has been reduced necessitating greater care in budgeting and execution.
 - The budget for general conditions is effectively set at cost with some stipulations on line items.

- **The decision should be made ... under which CMPA and City are willing to accept an advance [from MPDP which would] increase the cost of the project**
 - City's obligations capped at an absolute \$38,000,000.
 - MPDP can still seek grant assistance and the developer fees would apply.
 - It should be clear that CMPA and MPDP are working toward a complete package that generally includes the improvements shown in the design criteria with the likely exception of the conference center which may have to be moved to the future should cost savings prove inadequate to accommodate the building.
 - It should also be clear that the process identified in the agreement is a process of discovery and confirmation. As the process unfolds, it will become evident what can be achieved for the currently allocated budget.
 - When, and if, there are needs to change or reallocate priorities within the adopted budget, these responsibilities vest with CMPA and the City.

- **Design changes ... should rest solely with the CMPA and the City.**
 - They do and have always vested with these bodies.
 - The expectation is that the adopted design criteria represent the controlling set of design guidelines for initial planning and budgeting but these may be modified with agreement as necessary.
 - The comments, just above, describing the adopted budget have relevance to this points well.

- **Should MPDP ... manage the Public Improvements, an initial ... term of five years ... is ... reasonable [as is] an annually approved operating budget**
 - The arrangement calls for one five year term and a renewal.
 - CMPA approves all budgets.
 - MPDP can be removed for non-performance but the language has been tightened and further limits risks to CMPA for any budget shortfalls.

- **...if a third party manager is proposed for the multi-use stadium, why should the CMPA not contract directly with that firm?**
 - The developer is motivated to insure the protection of all assets, more so than a third party not allied to the project. In effect, the form of agreement now contemplated aligns the interest of CMPA, the City and the developer almost perfectly.
 - Through CMPA's review and approval powers, the public still maintains control of all functions.

- **The.... Lease Agreement should have provisions for extending the lease term on any parcel approved by the City for development as residential.**
 - The City has offered more advantageous terms for parcels that are substantively comprised of residential development (20%)
 - Commercial leases will remain at 60 years.
 - The City has acknowledged there may be some reasons to extend a lease term to engage the financial markets and to achieve project objectives.
 - MPDP can seek can seek an 80 year lease for hotel uses under the outlined terms

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- The pricing of land will reflect a market based process with periodic adjustments in any underlying lease keyed to CPI.
 - The agreement calls for a staged pace of development or the loss of rights.
- **MPDP Contractual roles should be clearly defined and a provision for termination...incorporated into the Agreement.**
 - Terminations are expressly laid out.
 - MPDP would retain some fees for demobilization but these are below those incorporated in the initial draft agreement.
- **...any consideration of phasing the project should include all of the Site Preparation and ...[address] those ...that would ... support the public and private construction contemplated but not initially incorporated.**
 - The agreement anticipates that.
 - It should again be understood that the CMPA, the City and the developers are advancing through a process to determine and confirm exactly what can be constructed for the allocated budget and what, if any, changes in priorities will be necessary.
 - The City and CMPA control these decisions.

Please bear in mind that there are agreements associated with the Pelicans, UWF, the museum and Studer which have generally been considered and which are obligations of MPDP and CMPA in varying degrees. Going forward, these agreements need to be continually monitored for their impacts on the development agreement.

Thank you for your patience. Feel free to call with any questions.

January 23, 2009

CITY COUNCIL WORKSHOP
WEDNESDAY, JANUARY 28, 2009, 4:00 P.M.
HAGLER MASON CONFERENCE ROOM
SECOND FLOOR, CITY HALL

- | | |
|---|--|
| Michael C. Wiggins, Mayor | 1) Review of 2006 Community Maritime Park Master Lease Agreement |
| Jewel Cannada-Wynn, Deputy Mayor | |
| Maren DeWeese | |
| Sam Hall | 2) Current Project Status - - Conditions Precedent |
| John Jerralds | |
| Larry B. Johnson | 3) Barry Abramson and Associates Evaluation of Draft Development Agreement |
| Diane Mack | |
| Megan B. Pratt | |
| Ronald P, Townsend | |
| P. C. Wu | 4) Project Financing |

If any person decides to appeal any decision made with respect to any matter considered at such meeting, he will need a record of the proceedings, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to city services, programs, and activities. Please call 435-1606 for further information. Requests must be made at least 48 hours in advance of the event in order to allow the city time to provide the requested services.

CITY COUNCIL MEMORANDUM

TO: Mayor and City Council

FROM: Alvin G. Coby, City Manager

DATE: January 23, 2009

SUBJECT: Draft Community Maritime Park Development Agreement Between Community Maritime Park Associates and Maritime Park Development Partners, LLC

In March 2006, the City of Pensacola entered into an agreement with Community Maritime Park Associates (CMPA) to "carry out the redevelopment of the project site by completing the Site Preparation Project pursuant to this Agreement and by entering into the Master Lease for: (i) construction of the Public Improvements; (ii) subleasing parcels for the private improvements to be constructed and financed by Developers; (iii) operating the Project as a unified and integrated multi-use project; (iv) entering into the Maritime Museum lease; and (v) entering into contracts, agreements or leases with users, managers, concessionaires, caterers, or operators of some or all of the Public Improvements." The CMPA proposes to fulfill its responsibilities by contracting with a private master developer.

Under Section 4.03(b) of the 2006 Agreement, the CMPA must submit to the City for review and approval all project plans and specifications coordinated among project professionals prior to commencement of any work. In response, the CMPA has submitted a Draft Agreement proposed with Community Maritime Park Development Partners, LLC (MDP) as the private Master Developer for review and input by City Council prior to finalization. The Draft Agreement represents ongoing negotiations between CMPA and MDP; a workshop to discuss the Agreement has been scheduled for January 28, 2009, but no formal action will be required of City Council.

In coordination with Abramson and Associates and The Cardwell Law Firm (the City's consultants), City staff has conducted a review of the Draft Agreement. The comments listed below represent the issues identified by staff in concert with the detailed evaluation by Mr. Abramson.



City of
Pensacola

Mayor and City Council

Subject: Draft Community Maritime Park Development Agreement Between Community Maritime Park Associates and Maritime Park Development Partners, LLC

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- Under the Draft Agreement, should MDP assume responsibilities as Developer, General Contractor, and Manager of the Public Improvements, it brings into question the future role of the CMPA.
- The Draft Agreement deviates from the Master Developer RFQ as a result of MDP's proposal to assume responsibility for construction of the Site Preparation Project and Public Improvements and management of the Public Improvements.
- The development fee is not but should be specifically established in the Agreement.
- The development fee is front-loaded but as a matter of policy the City traditionally pays in arrears for services rendered. While MDP has made a considerable expenditure in an effort to be chosen as the master developer, the proposal to recoup expenses upfront should be restructured more in line with the City's usual procedure of paying periodically for services as they are delivered.
- Allowing MDP to function as both the Developer and General Contractor will require CMPA to employ an additional layer of contract management to assure fulfillment of their fiduciary responsibility in the expenditure of public funds.
- Should MDP function as the General Contractor, the percentage allowance for overhead, profit, general conditions, and contingency should be specified in the Agreement. Further, the ultimate disposition of any contingencies not applied directly to the project should be established.
- The original concept contemplated the potential for private investment in the project; however, under the Draft Agreement, the option for the Developer to advance funds to the project in the form of a loan ultimately increases the cost of the project to the City. The decision should be made in advance and incorporated into the Agreement the terms under which the CMPA and City are willing to accept an advance and thereby increase the cost of the project or whether the preference would be to adjust the project scope to correspond to the original funding commitment (\$38 million).

Mayor and City Council

Subject: Draft Community Maritime Park Development Agreement Between Community Maritime Park Associates and Maritime Park Development Partners, LLC

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- The decision to incorporate design changes in the Site Preparation Project and the Public Improvements should rest solely with the CMPA and the City.
- Should MDP be allowed to manage the Public Improvements, an initial maximum term of five (5) years with the option to renew based upon performance is more reasonable. Management of the Public Improvements under a separate agreement should be considered based upon an annually approved operating budget and management fee.
- MDP should demonstrate its qualifications to manage the park and multi-use stadium and, if a third party manager is proposed for the multi-use stadium, why the CMPA should not contract directly with that firm.
- The Lease Agreement between the City and the CMPA for sixty (60) years is in itself an exception. Extending the sub-lease to ninety-nine (99) years for all of the parcels contemplated for private improvements is unreasonable. However, the Agreement should have provisions for extending the lease term on any parcel approved by the City for development as residential.
- The private development sublease terms should be established in the Agreement and the lease value of individual parcels might best be structured as the actual appraised value of the parcel at the time that a project is under negotiation. Further, any sub-lease of parcels or partitioning by the Developer should be subject to approval by the CMPA and the City.
- The CMPA and City's expectations of MDP in all of its contractual roles should be clearly defined and a provision for termination due to unacceptable and/or poor performance incorporated into the Agreement.

Mayor and City Council

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The issues identified are not intended to imply that the CMPA's decision to contract with a private master developer is unreasonable nor that the project should not be moved forward expeditiously. However, the Agreement as proposed with a private master developer will incur higher costs than contemplated in the 2006 Master Development Agreement. The issue is whether the CMPA can negotiate a contract with MDP that is not significantly greater in cost than if the CMPA or the City were to undertake construction of the Site Preparation Project and Public Improvements under the direction of a private project manager.

The CMPA and Maritime Park Development Partners can negotiate an equitable agreement; however, the Draft Agreement as currently crafted, in the opinion of this Office, is not in the best financial interest of the City or Community Redevelopment Agency.

MEMORANDUM

DATE: February 12, 2009

TO: CMPA Board of Directors

FROM: Owen Beitsch, PhD, AICP, CRE
REAL ESTATE RESEARCH CONSULTANTS
14 East Washington Street, Suite 500
Orlando, FL 32801

PH (407) 843-5635 FAX (407) 839-6197

RE: Continued Review of CMPA Proposal

If you attended the City's workshop, then you are aware that staff and consultants were charged with negotiating the remaining critical points in the development agreement proposed by Maritime Park Development Partners (MPDP).

These points are largely the same basic points that remained to be reconciled after the briefing I delivered to the board in December of last year. Following CMPA's individual meetings with MPDP, the principals of MPDP elected to make any changes necessary to finalize the agreement **after** also getting public input and the comments of the City. These comments have now been received. Clearly, the burden at this point lies with MPDP to take the business and strategic actions it believes are necessary to secure remaining approvals from the CMPA and the City.

Most information necessary to reach an accord has been received, and we are now entering the process of engaging in clarifications, talking back and forth. I think it would be fair to characterize MPDP as responsive and timely and the information provided is being digested. It may be possible to get the key points of discussion finalized in the next ten days but some issues are likely to require more time. I'll be optimistic that a 30-45 day period should generate a substantially complete document, ready to forward the City. Anything longer at this point, in my opinion, suggests difficulties that may not be solved.

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Regarding the timetable, one matter that you should be aware of relates to the simple legal difficulties of allowing MPDP to assume all roles simultaneously. There are many moving parts in the proposed development agreement. There is shared understanding of several points, including the complexities inherent in multiple roles, but a meeting of the minds doesn't speak to the content of a final document.

Here, I have summarized the major points and the current thinking related to these items. For the moment, I neither agree, nor disagree, with the manner in which different concerns might be handled or settled but I am reporting all substantive information so you will know where things presently stand.

- **Development fees:** These are generally identified in the proposal already but they can be explained with greater clarity. Part of the determination about suitable fees hinges on a detailed understanding of MPDP's costs, staffing, and obligations as the entity assumes multiple roles.
- **Scheduled payment of developer fees:** Various options are being explored. No immediate solutions identified.
- **Maximum budget:** The City has affirmed a maximum budget obligation \$38,000,000. Although other funds might be forthcoming from grants or similar sources, these are not assumed at the moment and do not affect the City's contributions. Adjustments in MPDP's fees could free more capital to enhance the project.
- **Developer loans:** The City has affirmed it does not want to make or to use any developer loans or advances to the project that exceed the stated \$38,000,000 commitment. The current agreement addressed this matter already but the specificity of the City's financial obligation indicate *any* reference to this option be deleted.
- **Park operations and management:** This is not a new issue. We have discussed a contracting commitment of five years. Extensions beyond that term are being discussed in terms of provisions under which extensions may or may not be granted. The idea is to detail very specific measurement or performance criteria under which the contact could be voided. Many issues are bundled together here and MPDP has agreed to issue a more detailed budget, explanation of various items therein, and staffing schedule. These matters are being explored.
- **Contracting and related fees for construction:** This is not a new issue. More favorable terms on these fees could reduce the construction budget enhancing project improvements within the same stipulated budget. The combined roles of developer and general contractor make it important that we fully understand potential staffing and cost overlaps. A staffing schedule and detailed explanation provide the basis for further evaluation.
- **Shared savings relative to GMP:** This item is closely related to the one above and the procedures for establishing the GMP. To the degree there are opportunities to realize any cost savings, there has been discussion about how these should be allocated to project enhancements. Whatever the savings might be, there is an expectation that a

substantial percentage should be assigned to the project, especially given the potential for MPDP to earn higher fees overall.

- **Land valuations:** This clearly is not a new issue. The City and CMPA do not want to enable a development timetable that has no relatively fixed period for performance, nor do they only want to collect rent on undeveloped property(ies). Achieving the proper balance among land values, developer flexibility, the applicable period, and termination is difficult. The draft document allows for termination but given the many possible ways to value the underlying land, more specificity is appropriate. MPDP has suggested an approach which is still being explored.
- **Lease term:** Primarily a City issue. Sixty years is adequate for most non-residential improvements.
- **Contract termination and penalties:** MPDP is asking seeking its full development fee should the City or CMPA default for any reason. The City is steadfast regarding its opposition to this point. MPDP has been asked to outline what costs might be incurred over the initial period of the approved agreement but prior to receipt of actual construction proceeds when risk may be greatest.
- **Project oversight:** The budget currently contemplates some executive would interact between CMPA and MPDP to manage changes or adjustments expediently, reporting to CMPA where necessary and appropriate. There seems to be a concern that this level of oversight may not be sufficient.
- **CMPA continuing role:** CMPA has a policy making role to address and approve all of the above on an ongoing basis CMPA will have to be satisfied that the proposed agreement maintains the board's standing according to its wishes and its abilities.

Other points were mentioned in the City's memorandum and were aired the other evening. In my opinion, the substance of these other points is reflected in the comments above. I will, of course, be glad to answer any questions you have.

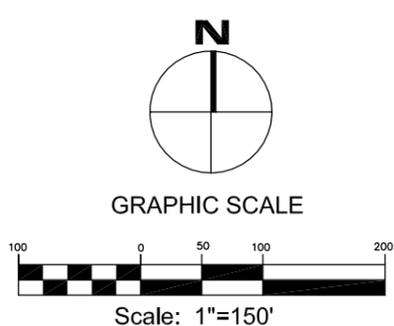
Phase I Community Maritime Park Pensacola, Florida Sitework Scope & Budget

February 2009

Maritime Park
Development Partners, LLC

 BASKERVILLE-
DONOVAN, INC.





Phase I Master Plan

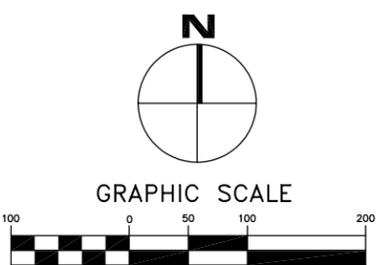
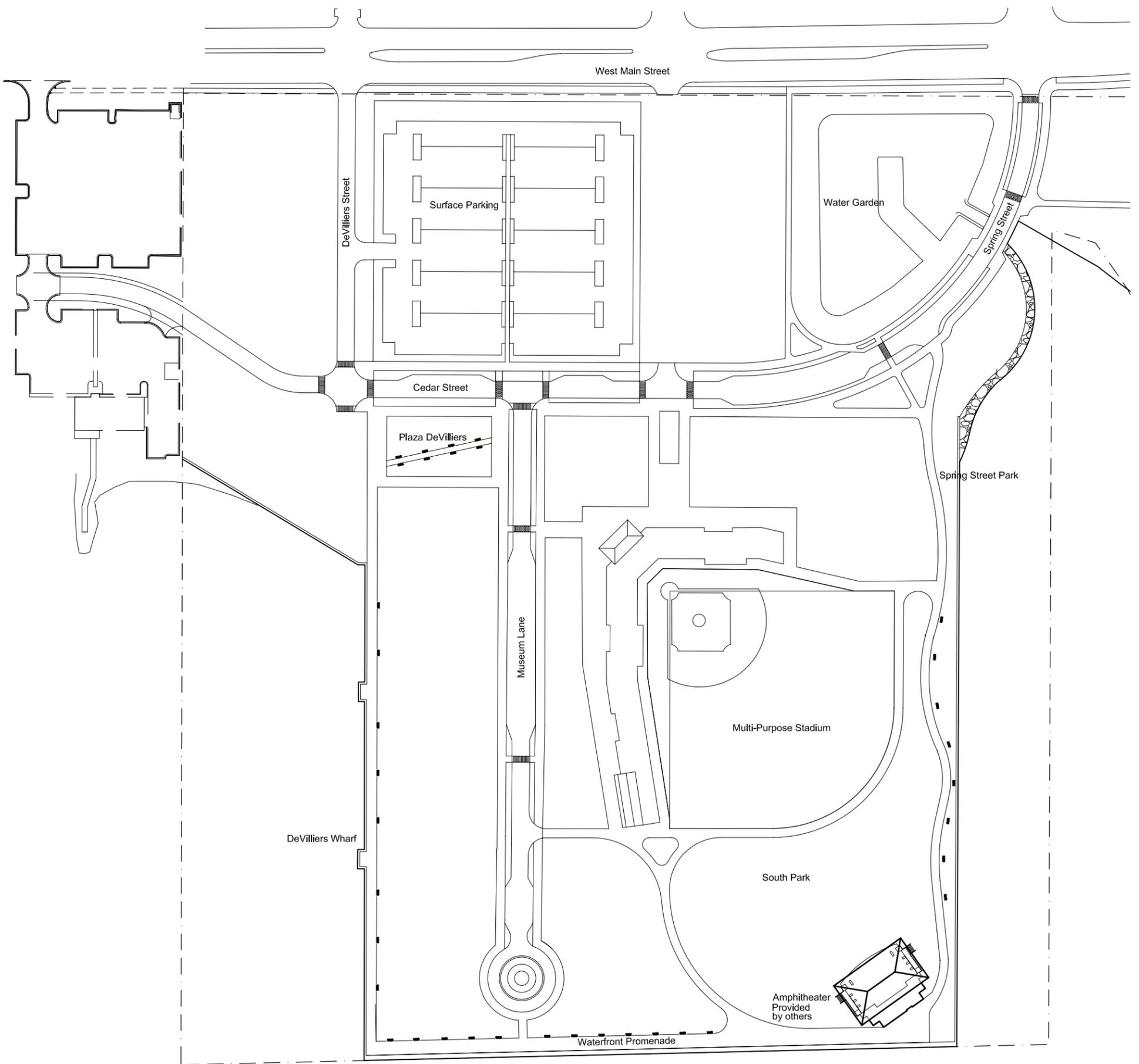
Community Maritime Park

Waterfront Park and Mixed-Use District on Pensacola Bay

February 2009

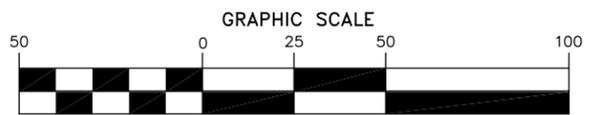
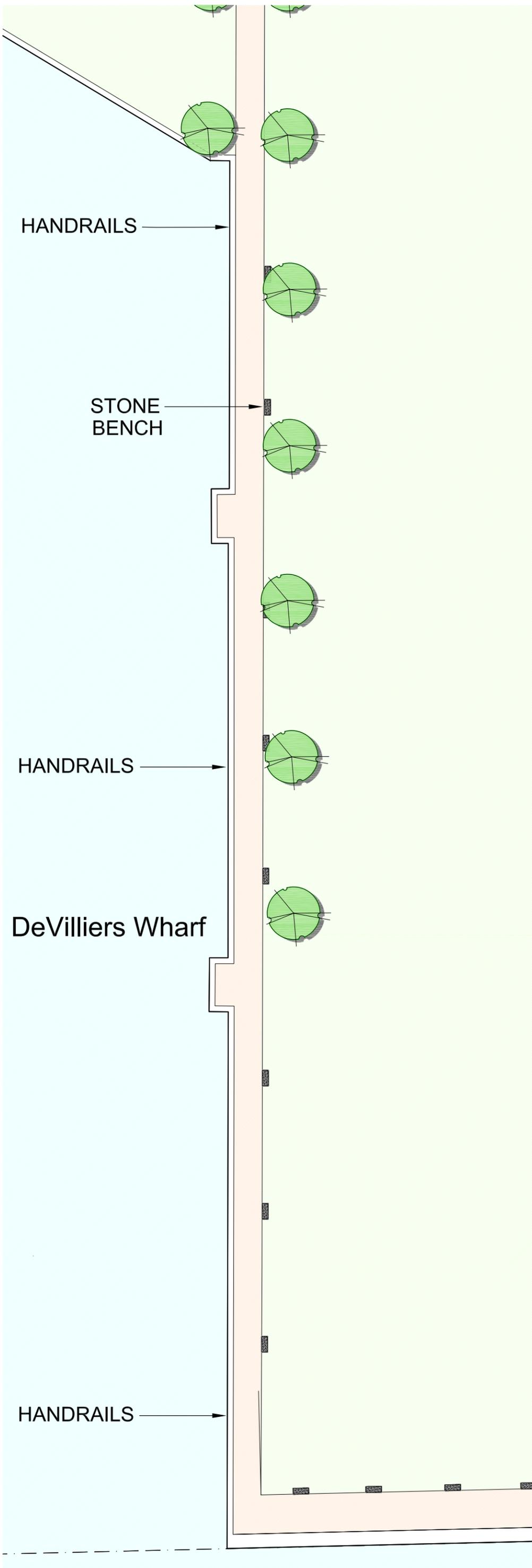
Maritime Park Development Partners, LLC

Prepared by Baskerville-Donovan, Inc.



Phase I Master Plan Community Maritime Park

SITE PLAN



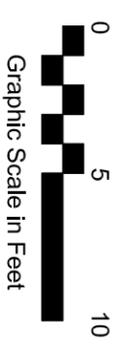
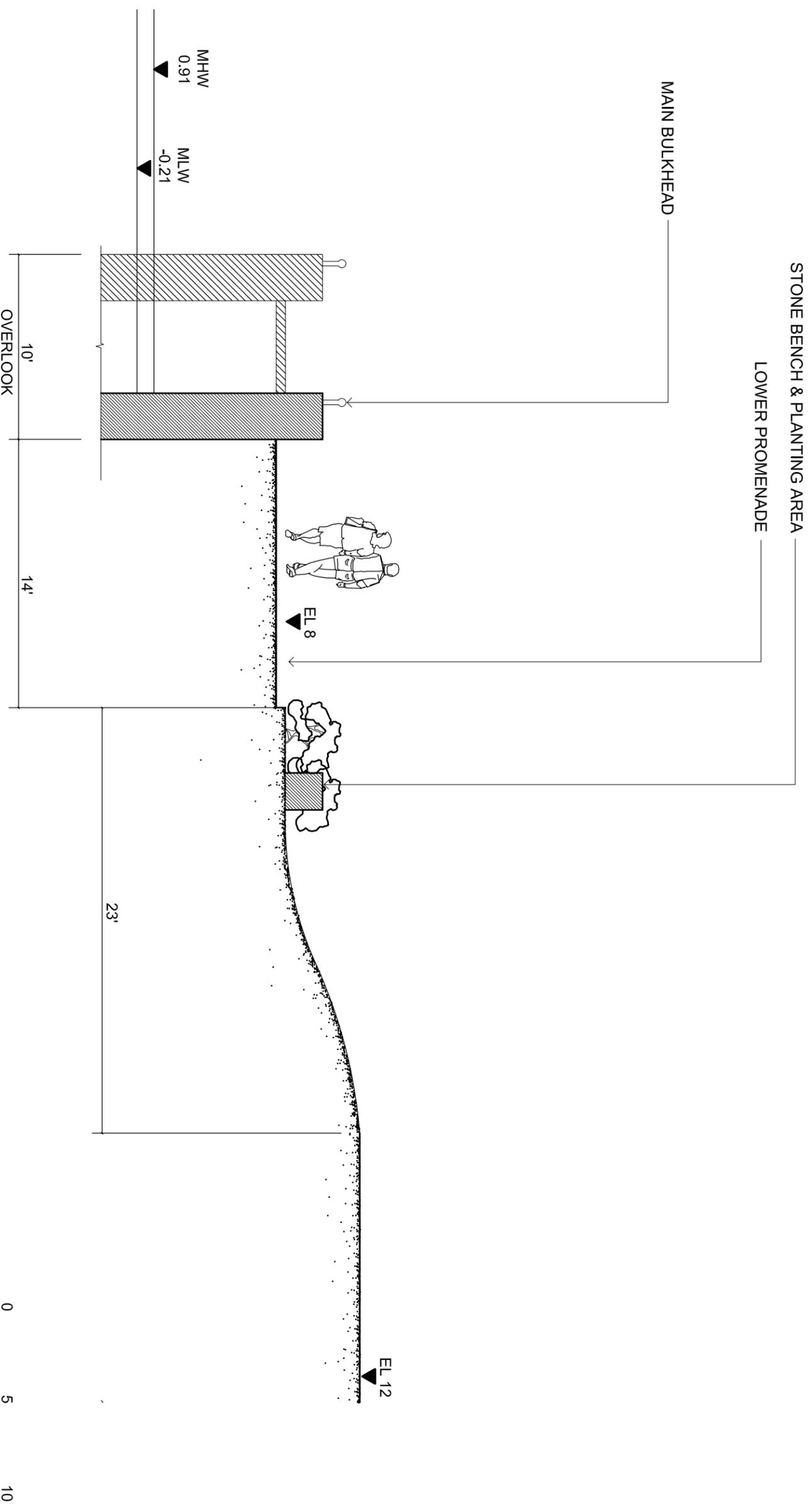
BASKERVILLE-DONOVAN, INC.

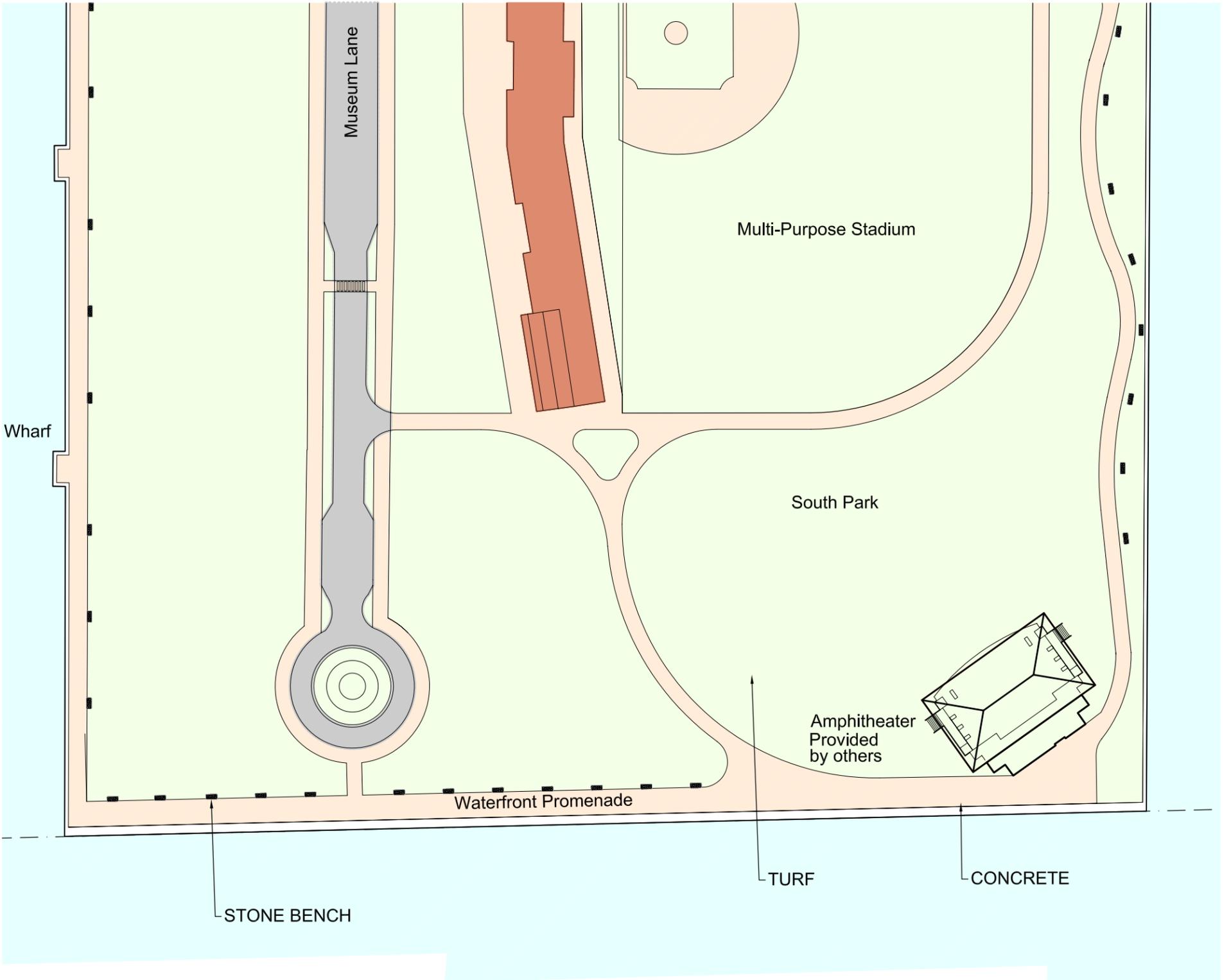
Phase I Master Plan
Community Maritime Park

**PROPOSED
DeVILLIERS WHARF**

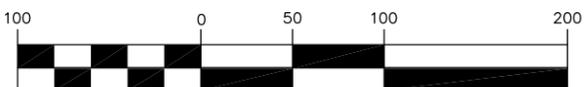
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Section "B"





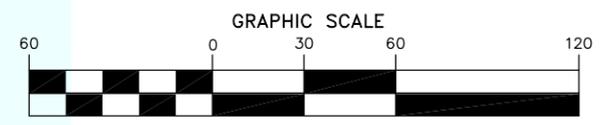
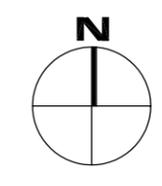
GRAPHIC SCALE



BASKERVILLE-DONOVAN, INC.

Phase I Master Plan Community Maritime Park

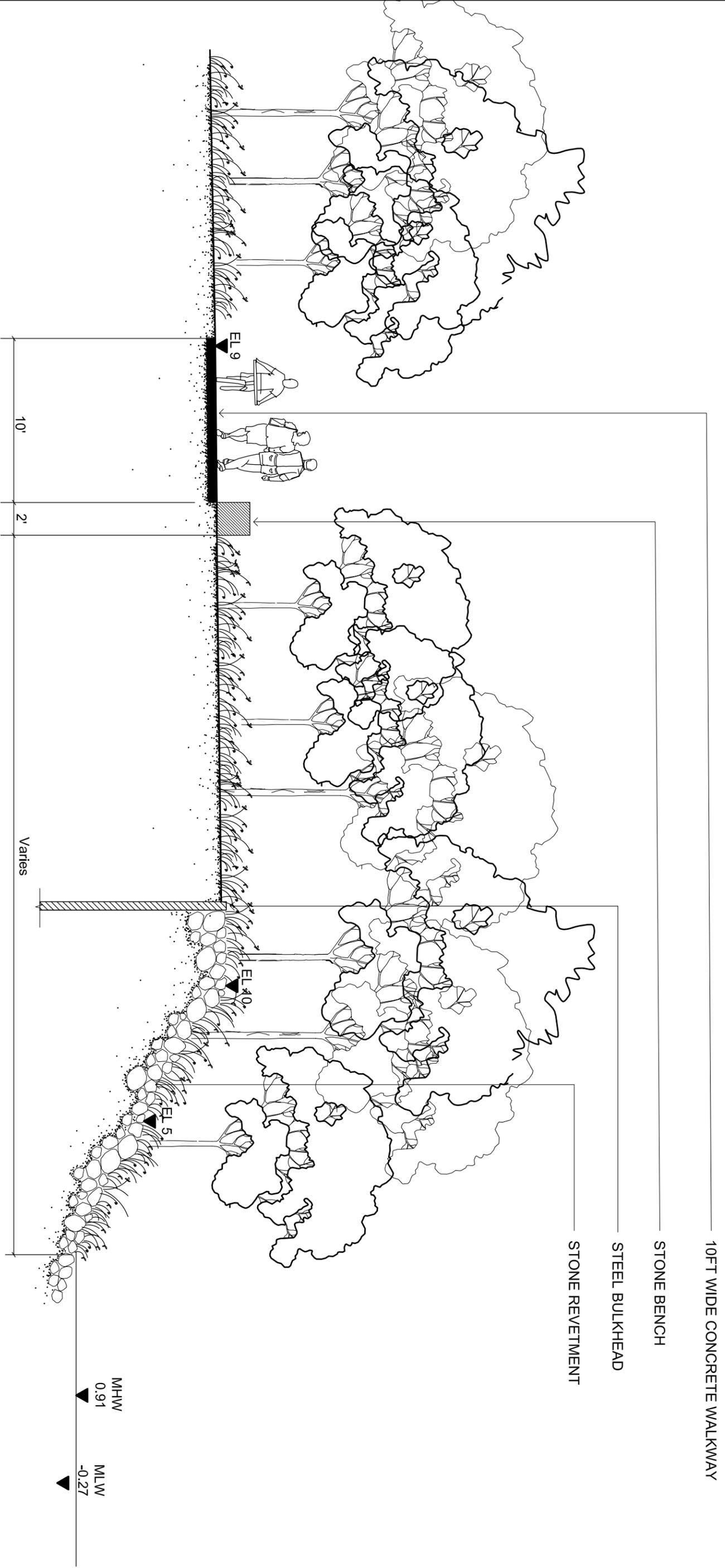
**PROPOSED SOUTH PARK &
WATERFRONT PROMENADE**



BASKERVILLE-DONOVAN, INC.

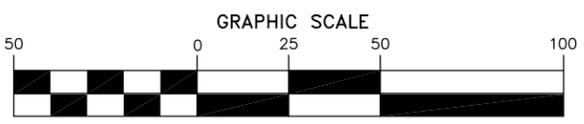
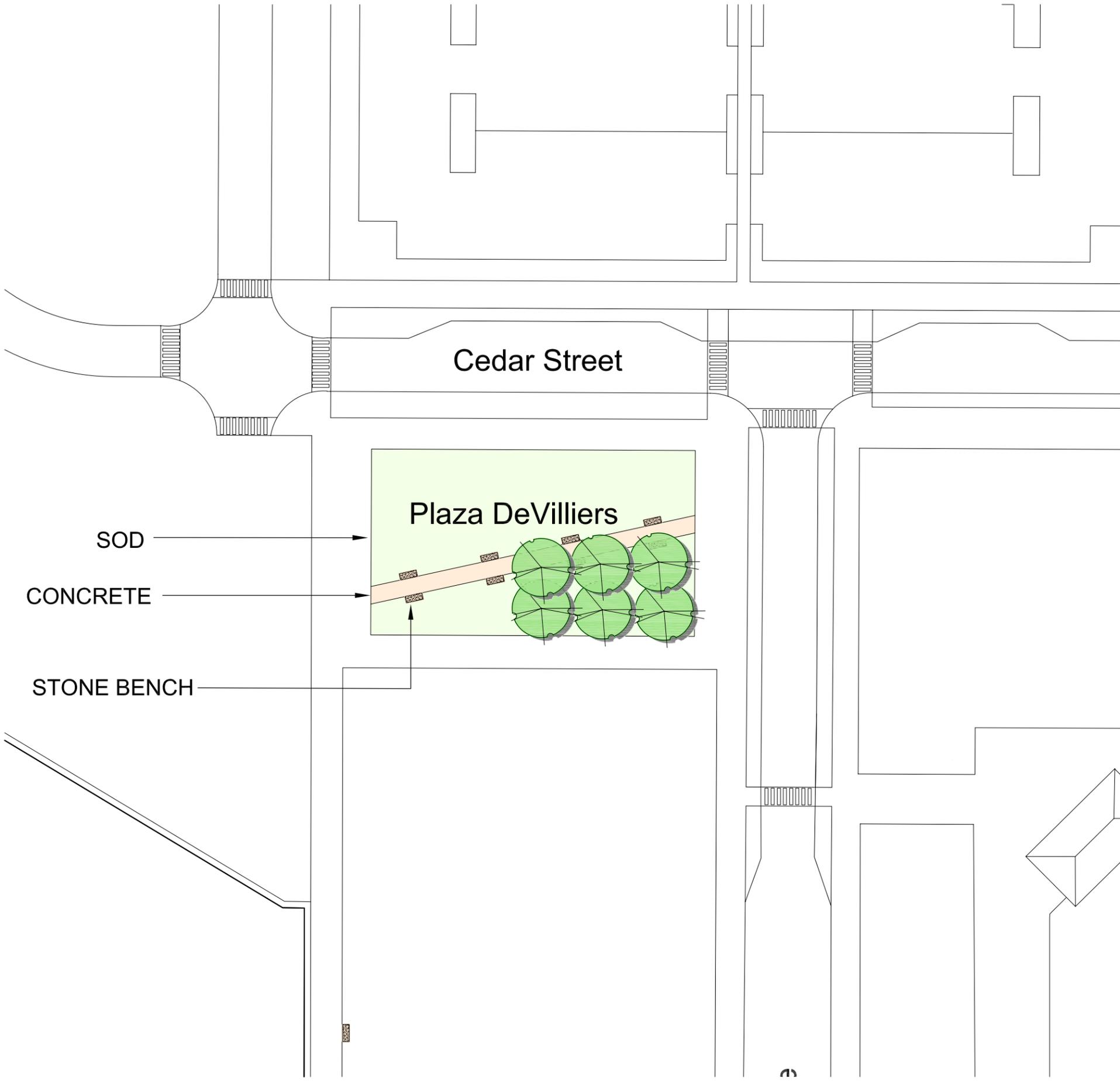
Phase I Master Plan
Community Maritime Park

**PROPOSED
SPRING STREET PARK**

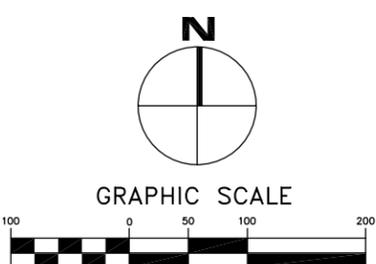
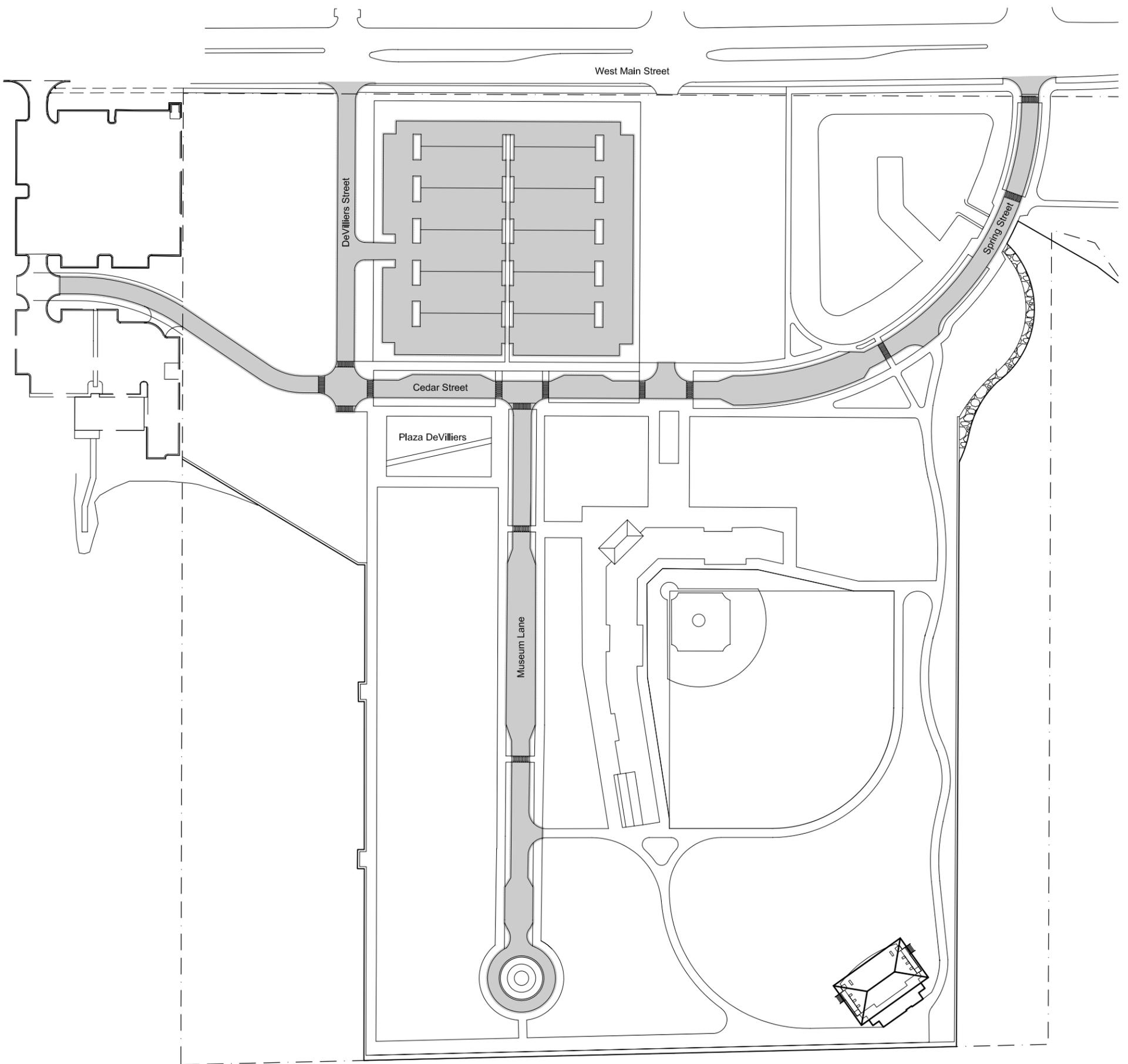


Spring Street Park

Section "A"

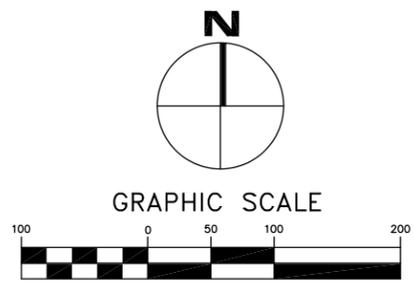


Phase I Master Plan
Community Maritime Park



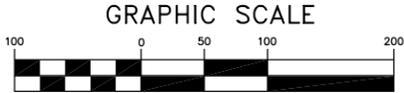
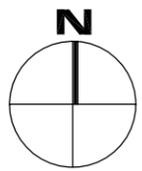
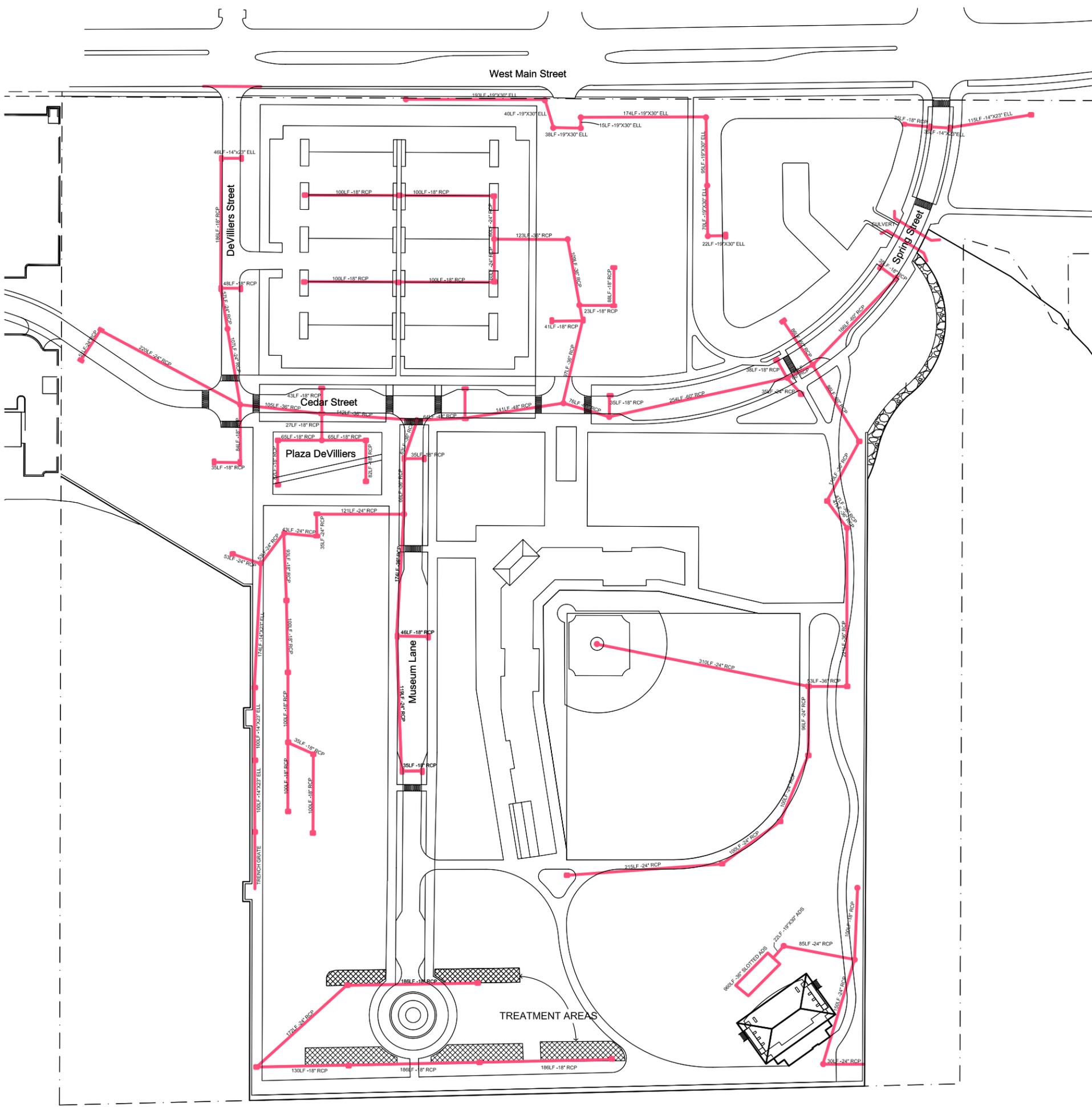
Phase I Master Plan Community Maritime Park

PROPOSED ASPHALT PLAN



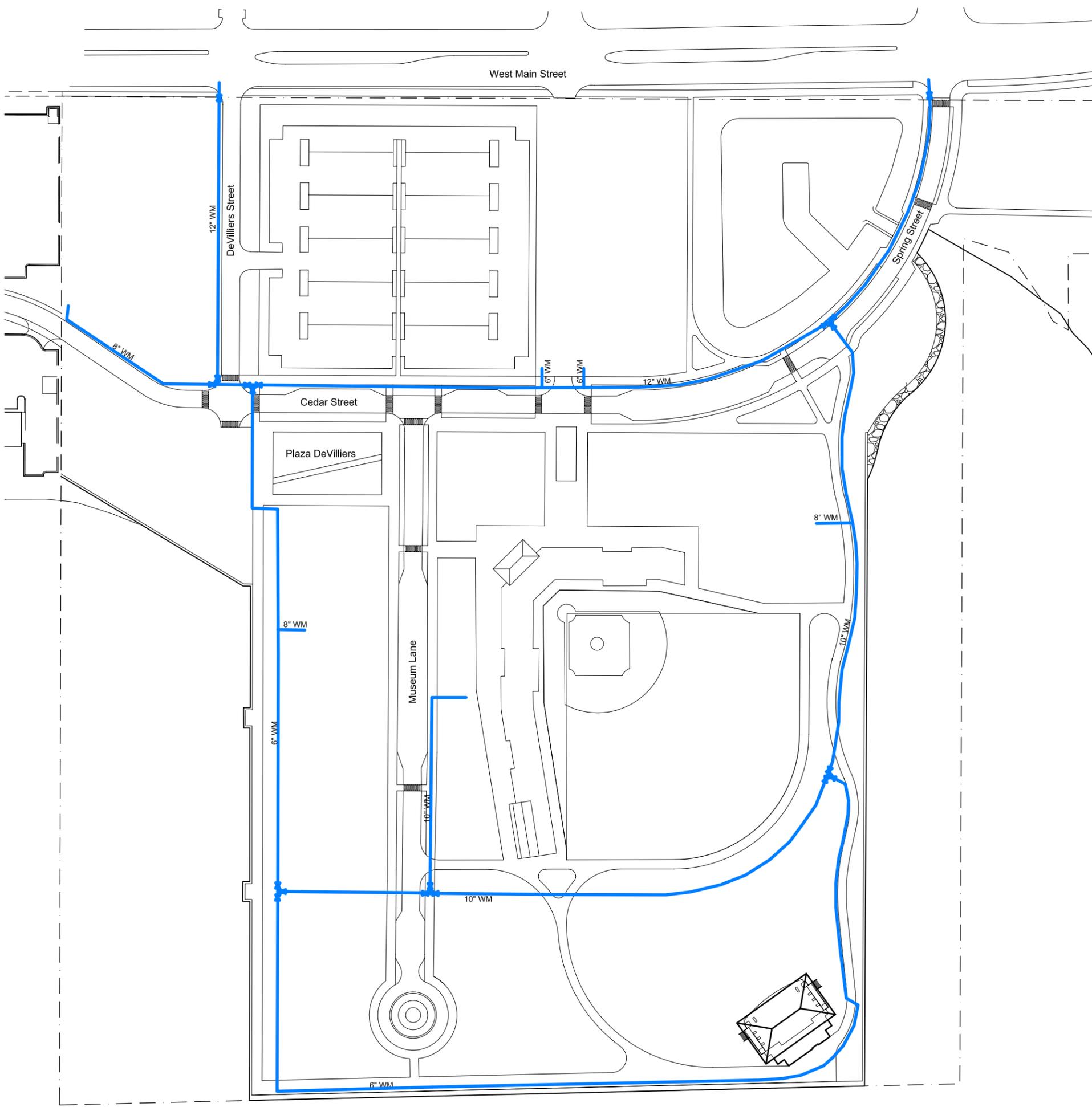
Phase I Master Plan Community Maritime Park

PROPOSED SANITARY SEWER



Phase I Master Plan Community Maritime Park

PROPOSED STORMWATER PLAN



GRAPHIC SCALE



Phase I Master Plan Community Maritime Park

PROPOSED WATER PLAN