

MACKENZIE.

May 3, 2021

City of Canby
Attention: Don Hardy, Planning Director
222 NE 2nd Avenue
PO Box 930
Canby, OR 97013

Re: **Canby Utility Board Phase 2**
Variance Request for Fence Height
Project Number 2160145.03

Dear Don:

On behalf of the applicant (Canby Utility Board), we are submitting this letter to request a variance to the eight-foot fence height limit specified in Canby Municipal Code section 16.08.110.E. The site, located at 1265 SE 3rd Avenue, is identified as Clackamas County Assessor Map 31E34C Tax Lot 00800 and is zoned Light Industrial (M-1).

Following a February 27, 2017 Planning Commission hearing, the Canby Utility Board project received land use approval for both Phase 1 and Phase 2 as part of DR 17-01. Phase 1 improvements (construction of Building A and improvements on the northern portion of the site) have already been built, as shown in Figure 1.



Figure 1: Canby Utility Board Phase 1



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Minor modifications for Phase 2 improvements were approved as part of MOD 20-02 and construction of Phase 2 (construction of Buildings B and C and improvements to the remainder of the site) is currently underway.

The original land use approval for Canby Utility Board proposed an eight-foot security fence for the secure portion of the site. However, during construction of Phase 1, thieves broke into the contractor's temporary office and stole construction materials. Based on this experience, the Canby Utility Board installed a 10-foot wire mesh security fence in Phase 1 to prevent future theft, as depicted in Figure 2 and Figure 3. The existing 10-foot fence was installed prior to the City's imposition of an eight-foot height limit in 2019,¹ so it is now a nonconforming structure which is allowed to continue per Canby Municipal Code (CMC) section 16.52.010.²



Figure 2: Existing 10-Foot Wire Mesh Fence East of Building A

¹ Ordinance 1514, adopted on September 4, 2019, imposed the eight-foot fence limit applicable in the M-1 zone.

² CMC 16.52.010 states that "Subject to the provisions of this section, a nonconforming structure or use may be continued but shall not be altered, changed, or extended except as provided herein."



Figure 3: 10-foot Existing Wire Mesh Fence Near SE 3rd Street Driveway

In the review of recent Phase 2 permit applications—which proposed a 10-foot fence to match the existing fencing, plus 11-foot-tall driveway gates—staff noted that the proposed security fence was taller than the standard eight-foot fence height now allowed for this location. As a result, the applicant is seeking Planning Commission approval of a major variance to allow the taller fencing and security gates for Phase 2.

CRITERIA FOR VARIANCE APPROVAL

To assist in evaluation of the requested variance, the discussion below demonstrates compliance with the City’s approval criteria, as outlined in CMC 16.53 – Variances, and with other applicable standards in the Land Development and Planning Ordinance (CMC Title 16).

16.32 M-1 Light Industrial Zone

16.32.010 Uses permitted outright.

Uses permitted outright in the M-1 zone shall be as follows:

- R. Utility storage or service yard;*
- T. Warehouse;*
- X. Business or professional office, when related and incidental to primary industrial uses of the area;*

Response: The Canby Utility Board development consists of an office building for a utility provider (Canby Utility Board provides water and electric service), associated parking areas, two warehouse/storage buildings, and utility yard and outdoor storage areas. These uses are all permitted outright in the M-1 Light Industrial Zone. This standard is met.

16.08 General Provisions

16.08.110 Fences.

E. Fences of up to eight feet in height are permitted for any development in C-2, C-M, M-1 or M-2, or Planned Unit Development zones.

Response: The existing 10-foot fence was installed under a prior version of the Land Development and Planning Ordinance, which at that time stipulated that “The Planning Commission may require fences of up to eight feet in height for any development in C-2, C-M, M-1 or M-2, or Planned Unit Development zones.” That standard established the Planning Commission’s authority to require fencing but it did not specify a maximum height limit for fencing proposed by a property owner/applicant. The existing fence, installed under the previous Ordinance, is a pre-existing nonconforming structure. By contrast, with an eight-foot height limit now in place, the proposed 10-foot fence and 11-foot gate configuration requires Planning Commission approval of a Major Variance prior to installation.

16.53 Variances

16.53.020 Major Variances.

These provisions are intended to prescribe procedures which allow variations from the strict application of the regulations of this title, by reason of exceptional circumstances and other specified conditions:

B. Standards and Criteria. A variance may be granted only upon determination that all of the following conditions are present:

- 1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the city and within the same zone. These exceptional or extraordinary circumstances result from tract size or shape, topography or other circumstances over which the owners of the property have no control. Actions of previous owners do not constitute other exceptional or extraordinary circumstances; and*

Response: The need for tall and attractive fencing arises both out of the site location and the usage of the site. This property is one of the few parcels in the M-1 zone that abuts High-Density Residential zoning on two sides, so out of respect for the neighbors, the applicant elected to utilize the black wire mesh design pictured above rather than using standard galvanized metal chain-link fence typical of many industrial storage yards. The abutting zoning is a condition over which the applicant has no control but is rather a policy decision made by City Council. The site’s long, narrow shape results in a relatively high ratio of street frontage to site area, and the lengthy street frontage increases the site’s exposure to potential theft. The Canby Utility Board provides essential infrastructure operations throughout the City and is a unique facility within the M-1 zone. The facility contains valuable specialized equipment, vehicles, tools and supplies that are vulnerable to theft during periods when the facility is not occupied. The tall, trespass-resistant fencing is a responsible approach for the applicant to ensure security of critical material supplies and specialized vehicles needed for utility operations. This criterion is met.

- 2. The variance is necessary to assure that the applicant maintains substantially the same property rights as are possessed by the owners of other property in the city and within the same zone; and*

Response: Approval of the proposed Major Variance will have no effect on the types of uses occurring at the site, as the Canby Utility Board facility has already been approved by the Planning Commission, consistent with allowed uses in the M-1 zone. Other than the fence height, applicable development standards are met with this

development. Allowing the 10-foot fence and 11-foot gate configuration will provide security measures that accommodate the storage and functional needs of a water and electric utility, which provides an essential service for members of the community. This criterion is met.

3. *Granting of this variance will not be materially detrimental to the intent or purposes of the city's Comprehensive Plan or the Land Development and Planning Ordinance; and*

Response: A Variance is requested to CMC 16.08.110.E, which would restrict fence height to eight feet. As illustrated on the enclosed fencing exhibit, the applicant proposes a fence height of 10 feet and a gate height of 11 feet (the gate is taller than the fence so that the sliding gate will not collide with the fence when it is retracted behind the fence). The CMC does not specify the intent or purpose of the fencing standards or the intent or purpose of the M-1 Light Industrial zone. However, increasing fence height from eight feet to 10 feet and gate height from eight feet to 11 feet would not be detrimental to the general purpose of zoning as it would result in orderly and efficient use of industrial land, increase employment opportunities within an industrial zone, and accommodate reasonable operations of a utility operator while protecting the facility from an established security risk.

It is reasonable to assume that one possible rationale for imposing an eight-foot fence height limit would be to preclude unattractive and domineering fencing designs that may be unwelcome to passers-by. In this instance, the wire mesh fence selected by Canby Utility Board appears attractive yet unassuming. In practice, it has not been objectionable to others, as indicated by the lack of complaints about the existing 10-foot fencing. The fence design relies on an angled upper section to resist defeat by climbing over, in lieu of less attractive alternatives such as razor wire coils or barbed wire as a deterrent. Given this specific fence design, allowing the requested increase to fence height will not result in an overbearing or dehumanizing fence appearance.

The fence height variance is consistent with Policies 1 and 3 of the Economic Element of the Canby Comprehensive Plan, which state the following.

Policy 1 – Canby shall promote increased industrial development at appropriate locations.

Policy 3 – Canby shall encourage economic programs and projects which will lead to an increase in local employment opportunities.

The degree of flexibility sought by the proposed Variance encourages development and operation of industrially-zoned property within City limits, increasing opportunities for employment of nearby residents.

Given these findings, the proposed Variance is consistent with this criterion.

4. *Granting of this variance will not be materially detrimental to other property within the same vicinity; and*

Response: Granting the variance will only affect the site itself, and it is limited to addressing a known security threat with a solution that is respectful and compatible with the other uses in the immediate area. The taller fence does not result in off-site impacts and does not create an unsightly condition since the fence is aesthetically pleasing and integrated into the overall site design. Therefore, the requested variance will have no detrimental impact upon other properties in the surrounding area. This criterion is met.

5. *The variance requested is the minimum variance which will alleviate the hardship; and*

Response: The proposed 10-foot fence and 11-foot gate configuration uses heights which are just two and three feet taller, respectively, than the eight-foot limit in the M-1 zone. The proposed fencing will address established security concerns based on experience with burglary and theft, using an attractive design that does not result in a fence that dominates or dehumanizes the streetscape or nearby properties. Significantly, granting the variance will allow the Canby Utility Board to maintain a presence within City limits without having to relocate elsewhere (e.g., in unincorporated Clackamas County) at a site that allows taller fencing outright. Approving the variance will enable efficient and secure use of the site for a permitted use in the zone. Granting the variance allows for efficient, viable, and reasonably secure public utility operations at a close-in location that benefits the City as a whole. This criterion is met.

6. *The exceptional or unique conditions of the property which necessitate the issuance of a variance were not caused by the applicant, or the applicant's employees or relatives.*

Response: The parcel's shape and extensive street frontage stem from prior land sales; the abutting residential zoning on two sides was determined by City Council; and the operational requirements of the utility are a result of the 1970 City Charter amendment which created the Canby Utility Board. These operational requirements necessitate a 10-foot fence and 11-foot gate to ensure the safety and availability of crucial materials, particularly after hours when no staff are on site to monitor visitors' arrivals and departures. It is perhaps not an exaggeration to note that the conditions requiring these perimeter security enhancements were caused not by the applicant but by thieves, and that the threat is not expected to diminish or retreat without effective counter-measures. This criterion is met.

The narrative above and associated site development plans demonstrate that the proposed variance for fence height is consistent with the requirements in Canby Municipal Code 16.53 – Variances. If you have any questions or comments on the material, please do not hesitate to contact me at (971) 346-3742.

Sincerely,



Brian Varricchione, PE
Land Use Planning

Enclosures: Variance Application Form
 Aerial Photo
 Fencing Exhibit
 Mailing List of Owners and Residents within 500 feet
 Warranty Deed for lot of record

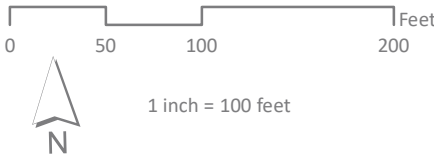
c: Dan Murphy – Canby Utility Board
 Adam Olsen – Mackenzie



Canby Utility Board
1265 SE 3rd Avenue
Canby, Oregon

LEGEND

- Site
- Tax Lots



SOURCE DATA: Metro RLIS Lite Base Data, Aug 2014
GEOGRAPHIC PROJECTION: NAD 83 HARN, Oregon North Lambert Conformal Conic

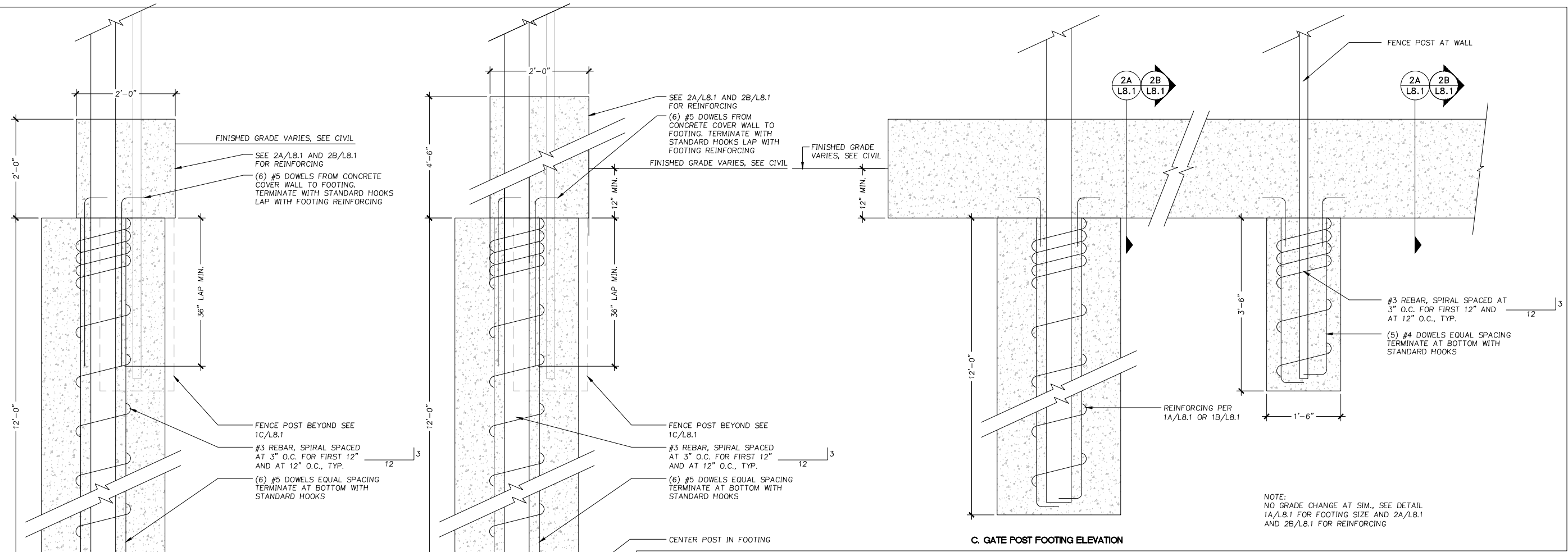
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Map Created By: BJV
Project No: 2160145.01



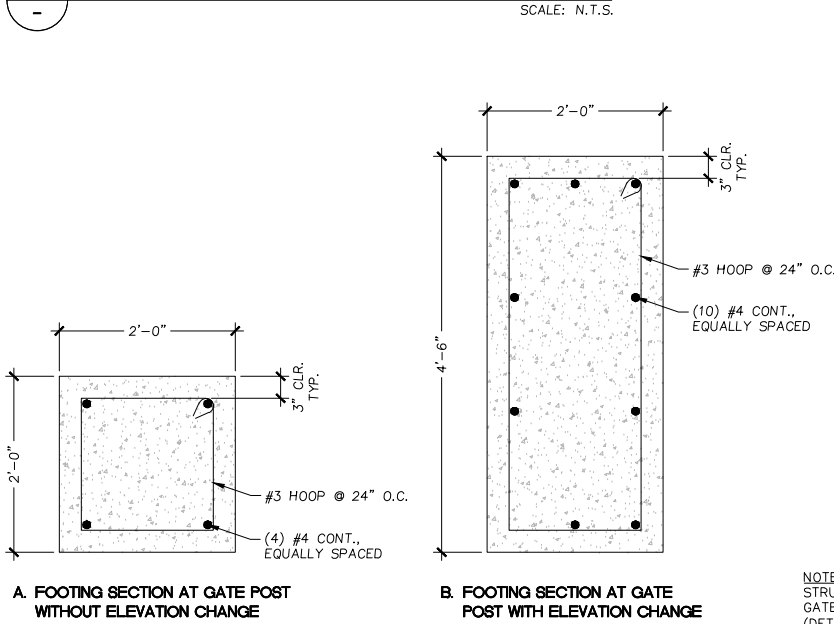
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1 GATE POST FOOTING



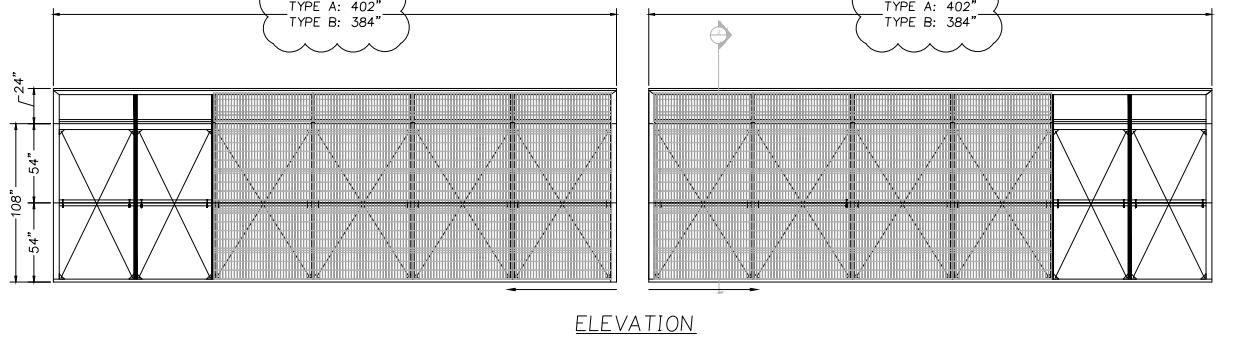
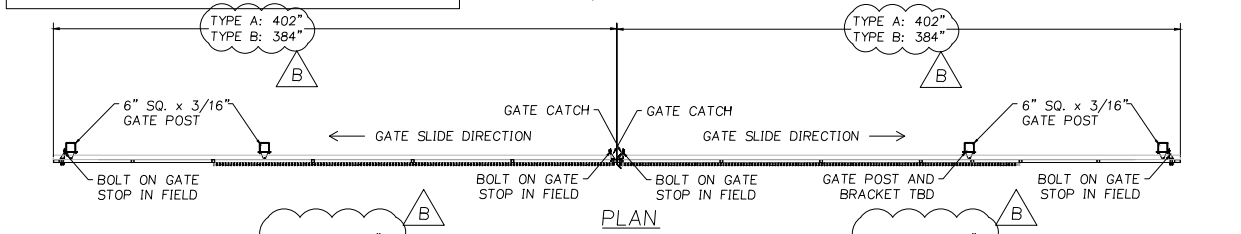
2 GATE POST FOOTING SECTION

SCALE: N.T.S.

- NOTE:
- CONTRACTOR TO PROVIDE FULLY ENGINEERED, STAMPED AND SIGNED, SHOP DRAWINGS AND SUBMITTALS FOR DOUBLE ALUMINUM CANTILEVER GATES (DETAIL 3 THIS SHEET).
 - CONTRACTOR TO PROVIDE DESIGN-BUILD SERVICES FOR GATE OPERATOR DEVICES AND MECHANISMS, INCLUDING, BUT NOT LIMITED TO, INDUCTION LOOP, REMOTE CONTROLS, GOOSENECK PEDESTAL, GATE MOTOR AND ASSOCIATED ELECTRICAL REQUIREMENTS. PROVIDE SUBMITTALS AND SHOP DRAWINGS FOR REVIEW AND APPROVAL BY LANDSCAPE ARCHITECT AND ELECTRICAL ENGINEER.
 - INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS AND RECOMMENDATIONS.
 - DO NOT SCALE DRAWING.
 - BETAFENCE USA/GUARDJAR (OR APPROVED EQUAL) CHRIS LANGWELL 1-214-887-4543 CHRIS.LANGWELL@GUARDJAR.COM
 - GATE "TYPE A" TO BE PROVIDED BY CONTRACTOR/MANUFACTURER. GATE "TYPE B" TO BE USED FROM REMAINING PHASE 1 INVENTORY. SEE GATE AND FENCING NOTES ON LT.1-LT.2 SITE LAYOUT AND MATERIALS PLAN FOR MORE INFORMATION.

GATE TO BE LIFTED VERTICALLY WITH SPREADER BAR ONLY NO LIFTING WITH FORKS HORIZONTALLY

PRODUCTION NOTE: PER BETA FENCE BTM MESH USE PRM30P101536, TRIM 3-1/2" OFF TOP TOP MESH USE PRM33P101900, TRIM 21-7/16" OFF TOP TRIM BOTH TO A WIDTH OF 67-1/8" (+1/4"/-0") OVERALL



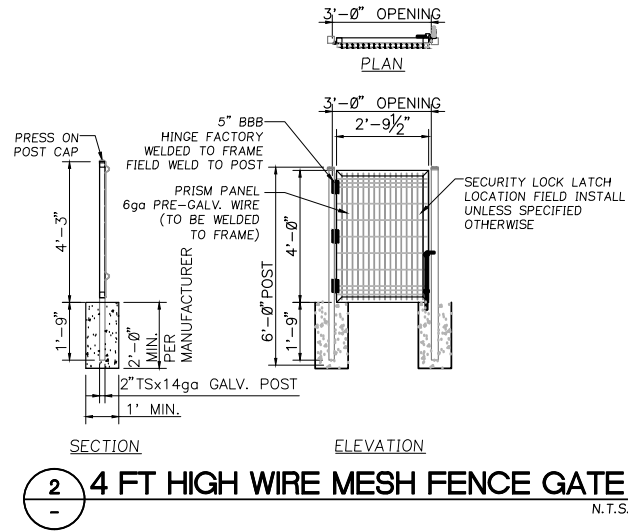
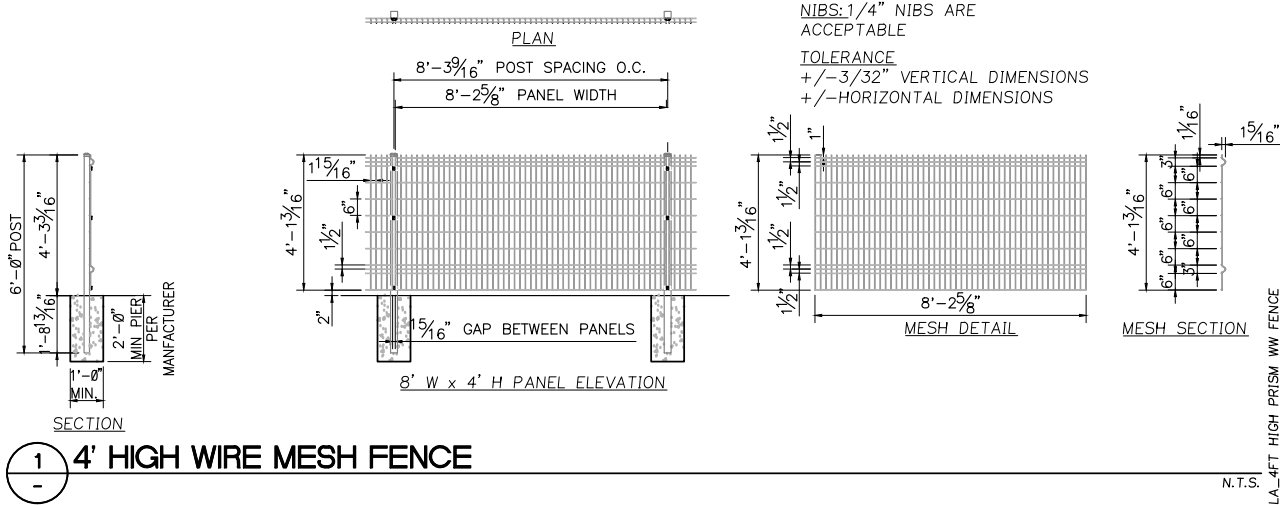
3 11' HIGH DOUBLE ALUMINUM CANTILEVER VEHICULAR GATE

SCALE: NTS

REVISION SCHEDULE		
Delta	Issued As	Issue Date
A	PLAN CHECK	06/09/20
B	ADDENDUM 2	07/07/20

NOTES:

1. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
2. ALL DIMENSIONS ARE CONSIDERED TRUE AND REFLECT MANUFACTURER'S SPECIFICATIONS.
3. DO NOT SCALE DRAWING.
4. BETAFENCE USA/GUARDIAR OR (APPROVED EQUAL) CHRIS LANGWELL 1-214-887-4543
chris.langwell@guardiar.com
5. WELDED WIRE TO EXTEND 1-2 INCHES ABOVE TOP OF FENCE



NOTES:

1. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
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M.

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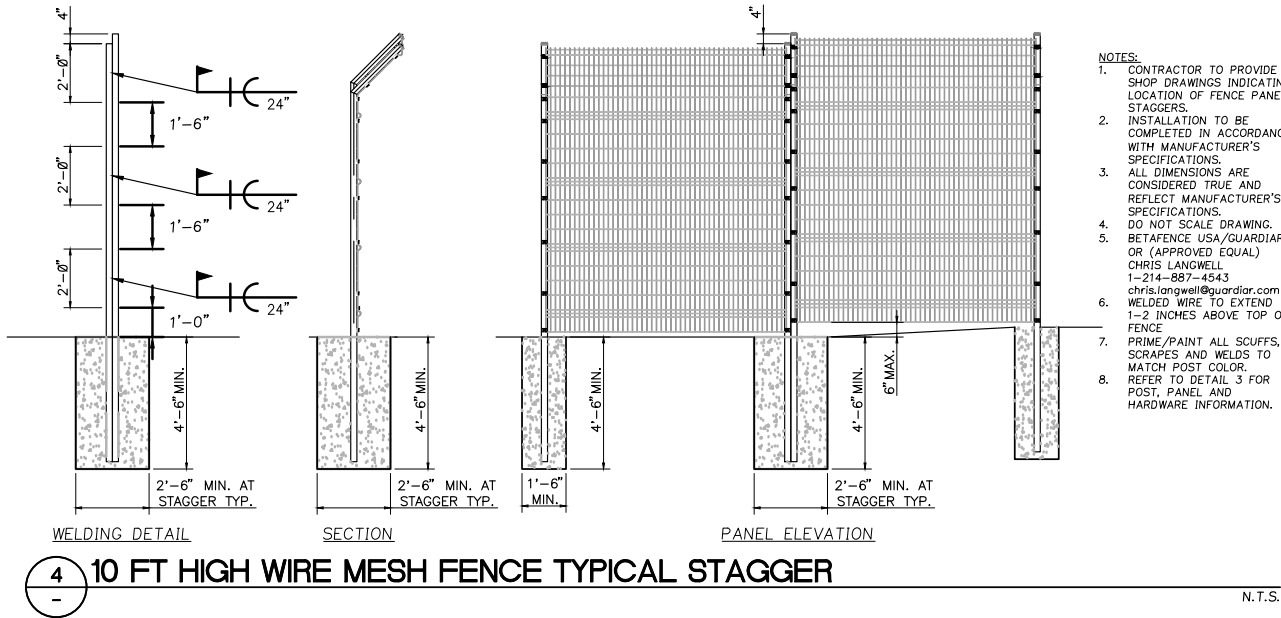
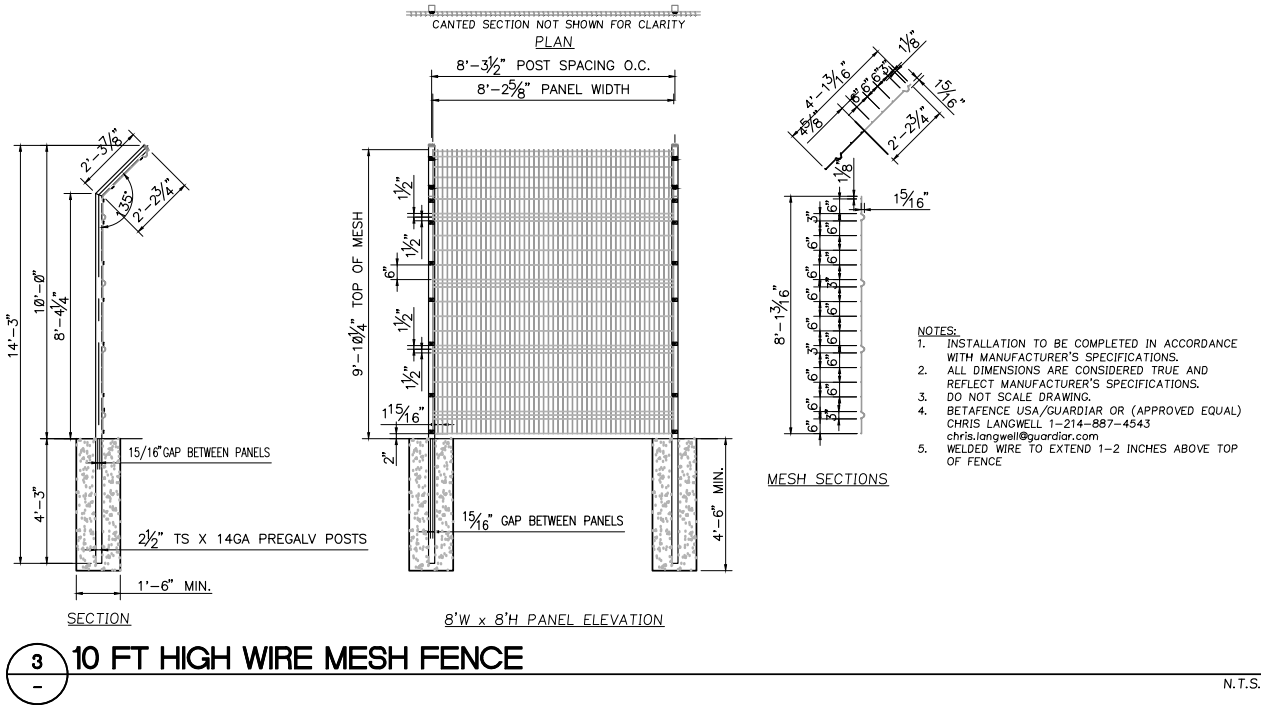
Project

CANBY UTILITY
COMBINED SERVICE
CENTER

1265 SE 3RD AVENUE
CANBY, OR 97013



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WITHOUT PRIOR WRITTEN PERMISSION



NOTES:

1. CONTRACTOR TO PROVIDE SHOP DRAWINGS INDICATING LOCATION OF FENCE PANEL STAGGERS.
2. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
3. ALL DIMENSIONS ARE CONSIDERED TRUE AND REFLECT MANUFACTURER'S SPECIFICATIONS.
4. DO NOT SCALE DRAWING.
5. BETAFENCE USA/GUARDIAR OR (APPROVED EQUAL) CHRIS LANGWELL 1-214-887-4543
chris.langwell@guardiar.com
6. WELDED WIRE TO EXTEND 1-2 INCHES ABOVE TOP OF FENCE
7. PRIME/PAINT ALL SCUFFS, SCRAPES AND WELDS TO MATCH POST COLOR.
8. REFER TO DETAIL 3 FOR POST, PANEL AND HARDWARE INFORMATION.

NOTE:

CONTRACTOR IS RESPONSIBLE TO PROVIDE FULLY ENGINEERED, STAMPED AND SIGNED, SHOP DRAWINGS FOR FENCE AND FENCE POST FOOTINGS (DETAILS 1-4 THIS SHEET).

DRAWN BY: ADS

CHECKED BY: TJB

SHEET:

L8.2

JOB NO. 2160145.01

PRE-CONSTRUCTION SET - AUGUST 19, 2020